

# **CHANGING LAND GOVERNANCE IN QUADRUPLE TRANSITION: CASES FROM BOSNIA-HERZEGOVINA AND KOSOVO**

By

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Declaration of authorship

I, Sean William Parramore, confirm that the work presented in this thesis is my own.

Where information has been derived from other sources, I confirm that this has been indicated in the thesis.



Brussels, 13 June 2018

To my family and friends  
around the North Sea  
and in the Balkans  
who made the transition of this thesis  
possible.

# Abstract

Why and how do societies change institutions governing access to land after experiencing collectivism and conflict, and what form of economic governance emerges as a result? This empirically-focussed thesis examines changes in land governance in two successor states of Yugoslavia transitioning from inter-ethnic war to fragile peace, and from a command- to a more market-driven economy: Bosnia and Kosovo. The subject of analysis is explaining what drives processes of land governance change; how these occur; who engages in them; and the form of economic governance that appears to emerge. The thesis contributes to knowledge on international state-building in contexts where after conflict and collectivism, liberal state-builders are positioned to influence land governance alongside informal networks and domestic governing elites.

Using process tracing and extensive field work data from semi-structured elite interviews and primary documentation, it investigates and compares six case studies of institutional change in land registration, use and alienation governance. It applies Ostrom's rational choice institutionalist analytical framework to identify the situational rules that created status quos of unregulated land access and enduring opportunities for rent-seeking in post-conflict Bosnia and Kosovo, as well as commonalities and differences between the cases. The framework suits taking a long-term perspective on change, from the end of conflict to 2015, and helps consider how structural influences, like Yugoslav and post-conflict legacies and liberal state-building agendas, may have (re)shaped enduring problems of unregulated land access. Finally, it permits using three different theories to explain why, how and with what outcome domestic and external actors change such status quos in land governance.

All case study findings show that in quadruple transition contexts, land governance change processes emerge when domestic leaders learn and recognize the economic problems of unregulated land access. In particular, the lack of reliable information about land rights was seen to scare (foreign) real estate investors. This recognition was helped along by liberal state-builders that pressured for land governance change in both countries. However, in Bosnia, their pressure was short-term, and persistent only in land registration reform. Institutionalizing this liberalizing reform proved sufficient to attract foreign investors. Yet to access other land rents, like building permits, personal and political connections remained crucial for land investment. Having clearer land records thus appeared to consolidate rather than undermine more impersonal forms of economic governance. By contrast, Kosovo's land registration, use and alienation governance changed in far-reaching ways. Yet institutional changes often failed to resolve uncertainty about land rights. As such situations endured, elites recognized that Kosovo's economic problems grew. This motivated continued external, national and local-level support for land governance change.

The concluding analysis gives reason to explain Bosnian land governance change as Limited Access Order Consolidation, while Kosovo's as Problem-Driven Iterative Adaptation. That suggests, on the one hand, that Bosnian and Kosovar elites tend to change situational rules in land governance differently: the former by only aligning them with narrow elite interests to consolidate their control over rent-seeking opportunities; the latter with a more inclusive, trial and error processes that have more fragile, open-ended outcomes. The difference seems to arise from Kosovo's economic predicament in land governance: it more strongly incentivizes local and national-level elites to cooperate and institutionalize changes that makes accessing land rents both easier and more impersonal. Yet on the other hand, the analysis shows commonality. The possibility of increasing land rents more powerfully explains land governance change than the introduction of a new external agenda, best practice or standard (Solution and Leadership Driven Change). I.e. observed over a longer period, it appears that post-conflict societies have strong endogenous reasons to rise above situations of unregulated resource access, and to collaborate and overcome collective action problems. Liberal state builders still have a potential role to play. They may help liberalize land governance to some extent, yet only so long as they commit with long-term support and a readiness to adapt to the interests of local governing elites.

The thesis therefore underscores earlier findings that contest that liberal state-building agendas, including European integration, are principal drivers of institutional change in quadruple transition contexts. Simultaneously, it challenges findings that overemphasize the domestic constraints on (externally-supported) attempts at liberalizing economic governance. The thesis thus adds to debates between new institutionalists highlighting domestic 'deep structures' and those stressing external incentives and agency.





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# Abbreviations

Abbreviation	In full
AMK	Kosovo Association of Municipalities
AoK	Association of Constructors
BCB	Bjelasnica Development Board
CILAP	Capacity Building for Improvement of Land Administration and Procedures in BiH
CEE	Central and Eastern Europe
BiH	Bosnia and Herzegovina
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees
DPA	Dayton Peace Agreement
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EPP	European Partnership Priorities
EU	European Union
EUD	European Delegation to Bosnia-Herzegovina
EUOK	European Union Office in Kosovo
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
FDI	Foreign Direct Investment
FGU	Federal Administration for Geodetic and Real Property Affairs
FIPA	Foreign Investment Promotion Agency
GIZ (GTZ)	German Development Agency
GoK	Government of Kosovo
GoS	Government of Serbia
HI	Historical Institutionalism
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
IAD	Institutional Analysis and Development framework
IBTV	Mount Igman-Bjelasnica-Treskavica-Visocica
ICO	International Civilian Office
ICR	International Civilian Representative
IEBL	The Inter-Entity Boundary Line
IFC	International Financial Corporation
IFIs	International Financial Institutions
IPRRs	Immovable Property Rights Register
ISC	Inter-ministerial Steering Committee
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPA	Kosovo Property Agency
KPCVA	Kosovo Property Comparison and Verification Agency
KSIP	Kosovo Standards Implementation Plan
KTA	Kosovo Trust Agency

LACAB	Land Administration Coordination and Advisory Board
LAO	Limited Access Order
LAOC	Limited Access Order Consolidation theory
LAP	Land Administration Project (GIZ)
LRP	Land Registration Project (World Bank)
MCOs	Municipal Cadastral Offices
MESP	Ministry of Spatial Planning, GoK
MFA	Ministry of Foreign Affairs
MINFIN	Ministry of Finance
MTI	Ministry for Trade and Industry
NATO	North Atlantic Treaty Organization
OAo	Open Access Order
OHR	Office of the High Representative
PAK	Kosovo Privatization Agency
PDIA	Problem-Driven Iterative Adaptation theory
PfD	Partnerships for Development
PIC	Peace Implementation Council
PLIP	Property Law Implementation Plan
RCI	Rational Choice Institutionalism
REC	Real Estate Cadastre
RECAP	Real Estate Cadastre And registration Project
RERP	Real Estate Registration Project
RS	Republika Srpska
RSGA	Republic Authority for geodetic and property affairs of the Republic of Srpska
SCI	Sociological and Constructivist Institutionalism
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
SLDC	Solution and Leadership Driven Change theory
SOE	Socially-owned enterprise
SPA	Serbian Privatization Agency
SRGA	Serbian Republic Geodetic Administration
UN	United Nations
UNMIK	UN Mission in Kosovo
UNSCR1244	UN Security Council Resolution 1244
UNSRSG	UN Special Representative to the Secretary General of the United Nations
U.S.	United States government
ZOI84	SOE for the Sarajevo Winter Olympic Games 1984

“...we are dealing with the old paradox of change.

How can good government arise out of bad,  
reform out of reaction and progress out of stagnation?...

[Notwithstanding that] tempting...sleight-of-hand  
which consists in discovering some “prerequisite”...

that must be allegedly introduced

before change can possibly assert itself...

I am trying to show

how a society can begin to move forward

*as it is,*

*in spite of what it is,*

*and because of what it is.”*

---

<sup>1</sup> Albert O. Hirschman (1963:6, original emphasis).





# Introduction

As NATO's bombing campaign ended on the 10<sup>th</sup> of June in 1999, Pristina, the capital of Kosovo, rapidly began to transform – again. For under Yugoslav socialism, Pristina's old Ottoman emporium had been levelled to make way for a neatly arranged provincial administrative hub, dreamt up by urban planners. Now those dreams seemed to turn into the stuff spatial planners may have nightmares about. Thousands of new inhabitants descended on the city. Mostly they were ethnic Albanians displaced by conflict and seeking permanent shelter. As Yugoslav authorities retreated, Pristina's Serb inhabitants fled<sup>2</sup>, thus vacating socially-owned lands and buildings. Then the international organizations began to arrive. They occupied several of the industrial complexes and buildings, both in the city centre and on its outskirts, so to begin the task of administrating, reforming and reconstructing Kosovo. Finally, there was the victorious guerrilla movement known as the Kosovo Liberation Army (KLA). Its leaders allegedly had already secured “the best properties”, like in the Sunny Hill neighbourhood.

To many observers it seemed that these new arrivals paid (too) little regard to institutions and laws that had governed Pristina's land in earlier decades. These included Yugoslav-era spatial plans, which were used to regulate land use and allocate land rights. Evidently, rules like these could be broken, especially if one possessed the “prestige” of having ousted the Yugoslav authorities.<sup>3</sup> As more people continued to arrive, informal real estate investors followed. New structures soon arose wherever builders secured space to raise them. Land use regulations continued to be ignored. Kosovo's new law enforcers, the United Nations (UN) police, were accused of looking on, or away.<sup>4</sup>

Today, any visitor to Pristina is presented with a visual legacy of this chaotic period. The visitor might notice that Pristina is strewn with thousands of new structures that are interspersed among, and

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<sup>2</sup> Allegedly, most of Pristina's Serb population, once numbering 80,000, had left (Janssens 2015:99–102).

<sup>3</sup> Interview Florina Jerliu (NI.1): Professor of Urbanism, urban development consultant to the ex-mayor of Pristina, Isa Mustafa, Pristina, 17.05.2015.

<sup>4</sup> Vöckler states UN police often could not, or would not intervene (Vöckler 2008:15).

even on top of Yugoslav-era, high-modernist complexes. For after 1999, an illegal construction boom continued for years, not just in Pristina, but across Kosovo (EU 2005). This occurred even as organizations like the UN and EU supported efforts to privatize property rights, and to enforce them. One German urban planner visiting Pristina thus remarked that Kosovo's capital appeared to be a "prototypical" manifestation of a society that struggles to reassert land governance after conflict: influenced by domestic and international actors, and formal and informal ones (Vöckler 2008:15).

State-building<sup>5</sup> scholars studying the Yugoslav successor states may find this example typical for transition contexts. Some of them would perceive these states as undergoing a period of "double transition". I.e. a transition from both collectivism and conflict (Katayanagi 2014; Kostovicova and Bojicic-Dzelilovic 2006b:8; Lampe 2014:4)). That meant on the one hand, a transition from a socialist form of economic governance that attempted to bring the "means of production", including land, under direct or indirect control of an authoritarian 'new class' (Djilas 1957). On the other hand, it involved a transition from conflict, where formal institutions were too weakened to provide basic services, such as property rights enforcement (Unruh and Williams 2013:3).

Some scholars have added other dimensions to describe post-collectivist transition. For instance, the Central and Eastern European (CEE) transition countries were first understood to be undergoing a simultaneous "triple transition", where the state, economy and society were seen to be in a state of flux.<sup>6</sup> This flux enabled certain individuals to take advantage of socialist institutions, be it to cope with the transition period, or to manipulate institutions to make illicit profits (Pickles and Smith 1998:7-8). At the same time, such behaviours appeared to also originate from deep flaws in collectivist governance. Flaws that in transition appeared to become locked-in or "path dependent". These locking-in processes, or legacies, were also observed in Yugoslav successor states (Smith and Swain 1998:37-39; cf. Stark 1996:995).

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<sup>5</sup> See for recent discussions on the external state-building concept in the Western Balkans that account for a broad range of actors and structures impacting institutional changes, e.g. Fagan (2012:546-550) and Berdal and Zaum (2013).

<sup>6</sup> Offe coined the concept of "triple transition" following the implosion of the rule of Central and Eastern European communist parties, so to distinguish the post-socialist transitions in Central and Eastern Europe from post-authoritarian transitions in Latin America and the Mediterranean (Offe 1991:508).

Other scholars argued that a fourth “stateness” dimension made Yugoslav-successor states like Kosovo different (Kuzio 2001). This fourth dimension also captured how conflict had led to a breakdown of state authority, capacity and formal rules. This breakdown purportedly had made the state too “weak” or handicapped to govern by old rules (Fearon and Laitin 2004). Yet conflict was also seen to have created opportunities to institutionalize new rules that would legitimate the commandeering of the means of production, like land, by members of certain (ethnic) groups (Tuathail and Dahlman 2006; Williams 2013). Indeed, Woodward argued that the Yugoslav wars were often wrongly depicted as a fight among ethno-nationalists. Instead, she argued it had fundamentally been about “whose interests and power will be represented, protected and institutionalized in the authority and rules of the post-war state” (Woodward 2011:106). Others found that after conflict, groups known as “conflict-networks” continued to use informal ties to ethno-nationalist parties and politicians to seize and control state authority that regulated segments of the (informal) economy (Bojicic-Dzelilovic and Kostovicova 2012). The presence of these conflict networks alongside international state-builders meant that transition involved a complex tussle over the future of economic governance. It pitted the “relational” influence of conflict networks against the state-builders’ post-war agenda to build impersonal economic governance (Bojicic-Dzelilovic and Kostovicova 2013:19). It also raised questions about both groups’ purported commitment to democratic (self-)governance (Chandler 1999, 2006b; cf. Bojicic-Dzelilovic and Kostovicova 2013; Kostovicova and Bojicic-Dzelilovic 2006a:2). Given that such domestic and external actors were seen to be involved in driving institutional change, even as the state, society and the economy remained in flux, Kuzio argued that it was most suitable to call Kosovo’s transition a “quadruple transition” (Kuzio 2001). This thesis agrees.

However, reading state-building literature today often may leave the impression that studying quadruple transition is no longer about explaining change processes, but the emergence of a new political-economic status quo. For example, scholars trace this status quo situation to governing elites

gradually consolidating their grip over the economic “spoils of peace” that they secured in the Yugoslav wars (Pugh 2002; cf. Belloni and Strazzari 2014; Knaus and Zaum 2013). Others argue that liberal and European state-builders contributed to this outcome for being too ineffective (Bieber 2011; Börzel 2013); too cautious (out of fear of destabilizing a fragile peace) (Belloni and Strazzari 2014; Cheng and Zaum 2012); and even too successful (by inadvertently enabling elite “corruption and rent-seeking”) (Uberti 2014:491–93). Regardless, the consensus in the literature seems to be that significant parts of the economy are tightly controlled by a small political-economic elite that uses informal means to control formal institutions that regulate the economy.

It may thus seem foolhardy to continue to look for cases where it seems possible that change occurred in a direction that enabled more impersonal economic governance and a level playing field, especially when accounting for the changed international context. Increasingly observers note the ascendance of “stabilitocracies” in (and around) the Western Balkans and their apparent acceptance by Western countries (Bieber 2017b; Economist 2017). They also note the unintended consequences of the EU’s reluctance about further Enlargement in the region (Fagan et al. 2015). Moreover, a feckless US leadership is seen to possibly engage in (real estate-related) conflicts of interest in regions nearby (Davidson 2017a, 2017b) and encouraging Machiavellian “Balkan princes” to pay lip-service to EU calls to strengthen the rule of law (Bieber 2015a, 2017a).

This thesis seeks to explore both the possibilities and limits of institutional change, as well as the type of economic governance that such change appears to consolidate. The broader point is to contribute to the state-building literature and its understanding of quadruple transition in Bosnia and Kosovo over the period following conflict and up until 2015.<sup>7</sup> It specifically aims to do so by explaining land governance change processes that have not been adequately considered in transition contexts like Bosnia and Kosovo. It thus asks the following research question:

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<sup>7</sup> A post-conflict period often features sporadic return to violence. Nevertheless, the end of conflict and beginning of the “post-conflict period” is here assumed to be “when political, security, and economic discourse and actions no longer revolve around armed conflict or the impacts of conflict, but focus instead on standard development objectives” (Unruh and Williams 2013:4). In the case of Bosnia-Herzegovina and Kosovo, this is said to be from November 1995 and June 1999 respectively (Ker-Lindsay 2009; Malcolm 1996).

*Why and how do societies change institutions governing access to land after experiencing collectivism and conflict, and what form of economic governance emerges as a result?*

We need to go back to Pristina to appreciate the origins of this question. When I started this research in 2013, I first focussed on externally-driven attempts to change anti-corruption governance in Kosovo (and Bosnia), and sought to explain their apparent lack of impact. Yet I soon came across an article published by the Guardian (Borger 2014) that hinted that the aforementioned illegal construction boom in Pristina had finally been put to a halt, almost fifteen years since it began. A new mayor had been elected, replacing the party that had been incumbent in city hall for the previous 14 years. The article reported that in spite of resistance by bureaucracies and construction companies connected to his predecessor, he had initiated a process to enforce land use regulations more systematically and impersonally. A year later, Kosovo's government, led by the defeated ex-mayor of Pristina, launched a country-wide legalization campaign to regularize all the illegal structures that had been built since the war. Pristina's new mayor supported the campaign to thus re-institutionalize land use rules that had long been ignored, as did local activists. This effort could also rely on the support of a modernized land registration system that indicated property boundaries accurately. That service that had been crippled in 1999, yet was now accessible for citizens online.<sup>8</sup> The thesis also came across news that in early 2015 Kosovo's government had concluded an unprecedentedly large foreign land investment deal with a French-Andorran consortium, while securing the consent of the local municipality: the Serb enclave of Strpce, which long resisted cooperation with Kosovo's government (Hajdari 2015).

Kosovo had evidently experienced a transformation in land governance. Land rights and regulations appeared less easily ignored and to help attract investment. What seemed to emerge was a more impersonal form of economic governance that inhibited 'rent-seeking', or practices that are often described as "corruption"<sup>9</sup>.

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<sup>8</sup> See chapter 6 and 7.

<sup>9</sup> See e.g. Belloni and Strazzari (2014); Capussela (2015); Uberti (2013)). A term this thesis will avoid where possible. Instead, it will refer to the term rent-seeking as this term appears more neutral, precise and linked to the problems of land access and the different situational rules that may create or bar access to scarce land rents (see chapter 1).

Unable to find any recent explanations why or how this transformation might have occurred, I chose to shift my empirical focus<sup>10</sup> to explaining land governance change. It seemed like a worthwhile choice. For firstly, it was not clear what exact institutional changes and reforms had occurred. Second, Kosovo is often distinguished for sclerotic politics and/or lacklustre (economic) reform processes. It seemed promising to investigate how a fragile society “can” in fact “begin to move forward *as it is, in spite of what it is, and because of what it is*”, like the political economist Albert Hirschman had done.<sup>11</sup> In other words, by explicating such cases I could not just add to knowledge about institutional change processes in an unexplored area of economic governance; but provide insights into the ways an ex-Yugoslav society in quadruple transition, known for its difficulties with driving change, had in fact succeeded in changing certain economic institutions, and thus contributed to transforming its economic governance more generally.

To compare the cases from Kosovo that I had read about, I chose to look for similar ones in another ex-Yugoslav country that had faced quadruple transition: Bosnia-Herzegovina (henceforth Bosnia). There were multiple reasons for doing so (see below) but one important reason was that comparing Kosovo with Bosnia was a better choice than comparing Kosovo to, say, Timor Leste. That country also experienced international intervention. However it did not share the history, laws and institutions that Kosovo and Bosnia shared as ex-constituent parts of the Socialist Federal Republic of Yugoslavia (SFRY), from which land governance in both countries evolved after the SFRY’s dissolution (see below and particularly chapter 2). By selecting cases from Bosnia and Kosovo the thesis could thus better explain variation between the observed changes processes.<sup>12</sup>

I ultimately found six cases of institutional change in three specific areas of land governance: land registration governance at country level (involving mainly the recording of land-based property rights);

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<sup>10</sup> This was in a way a narrowing of focus: from institutions that explicitly aim to prevent corruption (like the judiciary) to economic institutions, like land rights, that might (in)directly be able to enable or limit rent-seeking (see chapter 2).

<sup>11</sup> See epigraph. Albert Hirschman studied the politics of solving economic problems in Latin American societies in the 1960s. His aim was to draw social scientific lessons from how local policymakers coped with such problems in spite of earlier failures, regular obstructionism (from political and economic elites) and threats of violence (from revolutionaries) (Hirschman 1963:4-7).

<sup>12</sup> I thank Dominik Zaum and Vesna Bojicic-Dzelilovic for this point.

land use governance in the capital (involving mainly the regulation of urban land use) and land alienation governance in the case of two foreign, large-scale land investments (involving mainly the authority to alienate land and to transfer land rights). Each of these areas seemed to have been in a state of flux after collectivism and conflict.<sup>13</sup> Yet by 2015, there seemed to be strong reasons to believe that in the post-war years significant institutional changes and reform had taken place in each of them. It turned out that the observed processes of change at all three levels were well documented. That made empirical research feasible.

I then decided to break up the main research question into three sub-questions:

- i. What drives processes of change in land governance in quadruple transition in Bosnia and Kosovo?*
- ii. Who leads these processes and how are these realized?*
- iii. What form of economic governance do outcomes of these processes consolidate?*

Each of these sub-questions carries broad relevance to the state-building literature.<sup>14</sup> The first concerns the perennial question: why does societal change occur(?). The second relates to how change plays out, and who is involved. The third concerns the impact of the outcomes of particular (micro-level) change processes on (macro-level) economic order.

I further decided to draw on mostly qualitative data derived from primary and secondary documentation. I relied on interviews with key stakeholders conducted over a total of five months in 2015. This field work mostly took place in Sarajevo, Banja Luka, and Trnovo in Bosnia; and Pristina and Strpce in Kosovo. There were also follow-up interviews in Brussels. To describe the data, the thesis uses the process tracing and the case study methods. To analyse the data, I opted for Elinor Ostrom's new rational choice institutionalist analytical framework with which I could use three

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<sup>13</sup> See below, especially chapter 2.

<sup>14</sup> Scholars focusing on institutional change in economic governance in the Balkans and the political economy of external state-building made comparable queries (e.g see Bojicic-Dzelilovic and Thomas and (2015:3-4) and Berdal and Zaum (2013:3)).

theories of land governance change to explain the observed processes. The first of these theories explains land governance change as result of a systematic alignment of specific reforms with the interests of a dominant coalition. A second theory explains changes as a result of (external) reform champions successfully inserting an external best-practice solution; while a third insists that change occurs through recognition of a problem followed by an open-ended trial-and-error process.

In short, I choose to contribute to the post-conflict state-building literature by examining cases where land governance changed as Bosnian and Kosovar societies transitioned from war to (fragile) peace and from a command to a market economy. To a lesser extent I aim to contribute to the wider empirical literature on institutional change, but not theoretical debates. By deploying a rational choice institutionalist theoretical framework I mainly aim to explain observed changes in land registration governance at country level, land use governance at capital city level, and land alienation governance in relation to two large-scale land investment deals.

This introduction continues with (i) further justifying the research focus on Bosnia and Kosovo, external actors and land governance. This also serves to elaborate the case selection and how it fills gaps in the literature on post-conflict state-building. The introduction ends with (ii) a justification of the research methods, data and scope; a discussion of the research ethics; as well as (iii) an outline of the thesis argument.

## **Justifying the research focus on Bosnia and Kosovo in quadruple transition**

As already mentioned, post-conflict Bosnia and Kosovo share some core attributes, yet in each of these attributes important differences can be noted. It is in fact both the similarities and differences that justify this research focus on Bosnia and Kosovo in quadruple transition.



The first of these core attributes is a dismal economy. Both the Bosnian and Kosovar economy are mountainous and (essentially<sup>15</sup>) landlocked in Europe's south-east. Although sometimes known for their resource-riches<sup>16</sup>, they are mostly distinguished for ranking among Europe's poorest economies (Bartlett 2009; IMF 2004, 2006, 2015a, 2015b). After conflict, each was seen to struggle with attracting foreign direct investment (FDI). This view holds up even when compared to economies in the region, especially since the global financial crisis of 2008 (Bartlett and Uvalic 2013; Pula 2014). That said, Bosnians and Kosovars have struggled in different ways and in different degrees to reinvigorate their post-conflict economy.<sup>17</sup> Still, these similarities and differences in post-conflict economic development constitute an important justification for the research focus on economic governance generally.

Second, both countries share recent history, as noted above. Both were at the centre of the violent end of the SFRY, as well as refugee crises that resulted from two separate, yet not unrelated inter-ethnic wars (Bideleux and Jeffries 2007). Political scientists and political economists often find this shared history a key reason to justify their comparative studies of post-conflict institutional change (Belloni and Strazzari 2014; Divjak and Pugh 2008; Pugh 2004; Strazzari 2012; van Willigen 2012). This thesis agrees. At the outset of quadruple transition, both countries shared land laws and institutions as former constituent parts of the SFRY (and experienced Yugoslav redistribution of land<sup>18</sup>); and were subjected to prolonged post-conflict international intervention.<sup>19</sup> Yet in transition, such laws, regulations and distribution of land likely changed differently, with various areas of land governance being differently affected. Moreover, recognizing similarities at the outset also requires not overlooking significant pre-existing differences caused by the different length and character of conflict,

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<sup>15</sup> Bosnia technically connects to the sea via the coastal town of Neum, but is accessible by water mainly via Croatia.

<sup>16</sup> Bosnia and Kosovo are differently endowed with land-based natural resources and real estate assets. By natural resources I mean water, wood or raw materials. By real estate assets I mean building complexes or ski resorts (Unruh and Williams 2013:4).

<sup>17</sup> Although conflict destroyed national output in both countries, the recoveries were different. In Bosnia reconstruction and donor aid fuelled Bosnia's growth, while in Kosovo remittances significantly helped growth in the first post-war years (IMF 2000:11-12). Still, non-diaspora FDI remained limited (Uberti et al. 2014:430). Compared to Kosovo, Bosnia experienced greater (non-aid or diaspora-based) foreign investment in the period 2000-8 (Čaušević 2015:96-97). Yet the country failed to reverse the dramatic post-2008 collapse and slow recovery of FDI and weak employment trends (IMF 2012:27, 2015b:8, 28). In Kosovo, diaspora inflows, including into the construction sector, temporarily increased after declaring independence in 2008 (IMF 2011:15). However, in recent years FDI appeared to decline even as unemployment rose, jumping in 2013-4 (European Commission 2015a:32).

<sup>18</sup> This is discussed in the background chapter (chapter 2).

<sup>19</sup> See footnote 18.

histories of foreign rule and demographic change.<sup>20</sup> This further justifies the empirical research on the post-conflict land governance change: where relevant, this thesis accounts for these different histories in the observed cases.

A third core attribute is the problem known as limited statehood. Both Bosnia and Kosovo arguably have in common that in many areas, institutional and regulatory capacity remains weak. Formal institutions lack the ‘stateness’ to exert hierarchical authority and “to adopt and enforce collectively binding rules” (Börzel and Risse 2010:113). Bosnia and Kosovo also arguably share one big possible reason for this limited statehood. This is the challenge by influential actors to their sovereignty in the Westphalian sense: i.e. the “legitimate authority within given territorially demarcated areas” (Dodds, Obradovic-Wochnik, and Badran 2014:439–40).

However, scholars note that the origins of this limited statehood problem may be different in Kosovo and Bosnia. Kosovo’s limited statehood is often seen as an outcome of it formally being contested by a significant number of states. This includes powerful countries like Russia and China, as well as five EU member states (Ker-Lindsay 2009). By contrast, Bosnia’s statehood is fully recognized by the international community. On the other hand, Kosovo’s state is formally (constitutionally) centralized, while the Bosnian state is formally decentralized. This is especially so in the sub-state entity of the Federation of Bosnia-Herzegovina (FBiH, or simply the Federation). Bosnia’s ethnicized constitutional framework, formally established at Dayton in 1995, is often seen as the source of its limited statehood. Further, sub-state entities, particularly, the Republika Sprska (RS), are seen to use the country’s complex decision-making framework to stall state-level reforms. The RS has often rejected the authority of state-level institutions, and even threatened with secession. In Kosovo, local Serb communities have also challenged the authority of the government in Pristina, including after the Government of Kosovo (GoK) declared independence in 2008. Yet Kosovo’s problems of limited

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<sup>20</sup> See e.g. Malcolm (1996, 1998), Judah (2002) or Kanin (2003).

statehood seem to arise especially from the persistent external challenge to its institutions by one external actor in particular: the government of Serbia (Bieber 2015b).

For this thesis, the attribute of “limited statehood” or “stateness” remains worth exploring, particularly in relation to specific areas of economic governance. Even if it is the case that often formal political institutions may be exerting too little regulatory or hierarchal authority “to adopt and enforce collectively binding rules” (Börzel and Risse 2010:113), it has also been suggested this may be less of an issue in some areas (idem). In other words, understanding why, when, how, and where limited statehood arises, persists, or disappears, remains open to exploration. For instance, the RS has occasionally tolerated the authority of Bosnian state-level bodies and even cooperated with the Federation on economic reforms (Bojicic-Dzelilovic, Kostovicova, and Randazzo 2016:14). Similarly, Kosovar Serb communities, and even the Serbian government, have cooperated with Pristina to resolve enduring “technical” issues regarding institutions that are weakened by limited statehood problems. This includes institutions governing land (Bieber 2015b).

Understanding change in certain areas like land governance and in certain communities is therefore justified. Investigating whether changes in these areas arose from fundamental shifts in the attitudes of internal or external challengers to Bosnian and Kosovar statehood; or from altogether different reasons, helps scholars better understand the possibilities and limits of institutional change in these quadruple transition contexts.

### *External actors, liberal state-building and the EU in quadruple transition contexts*

A fourth attribute and source of basic similarities and differences is the prolonged attempts of certain external actors to rebuild Bosnia and Kosovo as liberal states after the peace settlements (in 1994-5 and 1999 respectively). This attribute is another general justification for the research focus.

The peace settlements allowed international entities, particularly the UN, the United States government (U.S.) and the European Union (EU), to become deeply involved in remaking the post-war institutional framework by securing influential formal roles in “supervised independence”. This

allowed foreign officials, frequently from western governments, to administer, adjudicate, routinely recommend policy and legislate alongside, or even in lieu of, local decision-makers (Venneri 2007; Knaus & Zaum 2013). Under extraordinary circumstances, the internationals commanded powers to take unilateral executive action, particularly if the post-war peace was seen to be threatened. In Bosnia this authority was held by the High Representative (OHR) and in Kosovo the International Civilian Representative (ICR) (van Willigen 2012).

These external actors can be argued to have been united in purpose: to promote democratization and liberalization in Bosnia and Kosovo, or what also became known as “a liberal peace”<sup>21</sup>. This involved rebuilding and re-establishing institutions at state, regional and local levels in a way that made domestic decision-making processes democratic, accountable to a rule of law, and supportive of free markets and competition (Visoka and Richmond 2016). The liberal peace agenda embodied a hope that such reforms would provide a basis for legitimate democratic government and give Bosnians and Kosovars an equal shot at accessing economic rents and opportunities. Additionally, lingering inter-ethnic tensions and associated risks of rekindling regionally destabilizing violence, might be reduced.<sup>22</sup>

Among these liberal state-builders, the EU, in particular, is often seen as unique. This is essentially for two reasons.

The first is that the EU is often seen to have capacity to incentivize countries to change rules so that these align with EU rules before accession to the Union. This “transformative power” (Grabbe 2006) thus was seen to arise from the prospect of membership (Vachudova 2005). Ex-Yugoslav successor states like Bosnia and Kosovo at first received this prospect only implicitly, with the so-called Stability Pact in 1999 (just one ex-Yugoslav state, Slovenia, was by then explicitly on track to accede (it would along with 9 other states in 2004)). It was after the initial post-conflict years that the

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<sup>21</sup> Simply assuming liberal peace builders are in perpetual agreement in their agenda is simplistic, as Zaum (2007) persuasively argued. Nevertheless, for reasons of scope the thesis takes liberal peace builders’ broad intentions for granted. However, it accounts for their different types and forms possible interventions (see chapter 2).

<sup>22</sup> Coined by Doyle “liberal peace” (1983) was adapted to quadruple transition contexts (Campbell, Chandler, and Sabaratnam 2011; Eriksen 2009; Paris 2010). Liberal state-builders’ deep involvement raised questions about domestic ‘ownership’, and the accountability and democratic legitimacy of their involvement in Bosnian (and Kosovar) politics (Chandler 2006a, 2010), as well as the economic viability of their “neoliberal” agenda (e.g. restricting space for “industrial policy” (Uberti 2014)). The thesis does not intend to contribute by taking a normative stance on such questions.

accession prospect became more explicit with the so-called Stabilisation and Association Agenda (SAA) (Bojicic-Dzelilovic et al. 2016).<sup>23</sup> The SAA directly aimed to incentivize domestic actors in the Western Balkans to modify their institutions, thereby enhancing regional ‘Stabilization’. It was also held as a first stage of formal ‘Association’: a formalized process that involved complying with the EU’s membership requirements that ended in accession to the EU (Phinnemore 2013). The SAA was comparable to the institutional reform process followed by post-socialist countries in Central and Eastern Europe (Bieber 2011; Juncos 2012; Keil 2014). This was because the SAA involved incrementally adjusting domestic laws to the EU’s body of norms, laws and rules; the so-called *acquis communautaire*. Moreover, the EU in theory wielded hard power (if domestic governments failed to comply with EU SAA conditionality they could be denied access to specific benefits (like access to the EU internal market, pre-accession funds, visa-liberalization, etcetera<sup>24</sup>)), as well as soft power<sup>25</sup> to diffuse external norms. Domestic governing elites were thus theorised as norm-followers that were not only incentivized by the prospect of joining the peaceful and prosperous Union, but who could “be socialised” to adopt the “liberal democratic peace package” (Björkdahl and Gusic 2015:238).

Yet the EU’s transformative power was also different in the SAA countries, particularly in Bosnia and Kosovo.<sup>26</sup> As the EU’s agenda emerged alongside the liberal peace building agenda, its conditionality came to account for the legacies of conflict. For instance, it created formal accession requirements that had not existed for any other (potential) candidate member. This included the normalization of relations between the Government of Kosovo (GoK) and the Government of Serbia (GoS) (Bieber 2015b); and the removal of ethnic requirements in the Dayton constitutional framework in Bosnia (Perry and Keil 2015). This effectively meant countries like Bosnia and Kosovo had to pass more legal hurdles before they could advance in the EU accession process.

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<sup>23</sup> Once proclaimed in 2003 (European Council 2003) the SAA extended the promise of membership to all countries in the Western Balkans, including Bosnia and Kosovo. This promise was extended to Kosovo under UN Security Council Resolution 1244 (UNSCR1244), which meant it allowed five EU member states to continue to refuse to recognize Kosovo’s claims to sovereignty (Ker-Lindsay 2009; Bieber 2013).

<sup>24</sup> Conditionality may be viewed as an external event that may provide ‘incentives’ inducing short-term institutional change, and broader changes over the long-term (Hughes, Sasse, and Gordon 2005) (see chapter 1). For further details on EU enlargement policy in land governance see chapter 2.

<sup>25</sup> A.k.a. the EU’s ‘normative power’ (Manners 2002).

<sup>26</sup> The SAA process differentiated between candidate countries and potential candidate countries (unlike earlier Enlargements in CEE) (Phinnemore 2013). Bosnia and Kosovo were potential candidate countries at the time of this thesis’ field work (2015).

The second reason why the EU is considered a unique actor among liberal state-builders is that the EU was an actor embedded in the domestic governance frameworks of Bosnia and Kosovo. Besides the EU Delegation in Bosnia (EUD) and EU ‘Mission’ in Kosovo (EUOK), the EU assigned a special representative (EUSR) to “play an active role in efforts to consolidate peace, stability and the rule of law” in each country (European Council 2015). One EUSR was situated in the OHR from 2002, and from 2008 another EUSR assumed the role of ICR in Kosovo.<sup>27</sup> Thus both EUSRs were mandated with executive authority and discretionary powers at the domestic level.<sup>28</sup> In addition, the EU also established its own rule of law support missions in both countries (Ioannides and Collantes-Celador 2011). The EU thereby went well beyond its ‘usual’ role of promoting rule of law reforms and fighting corruption in EU accession and neighbourhood countries at a distance (Kartal 2014; Ridder 2009; Papakostas 2013; Börzel & Hüllen 2014; Mungiu-Pippidi 2013).

Having established that the role of the EU in Bosnia and Kosovo is unique, it must now be justified why this research is not simply focussed on the EU as a driver of institutional change processes in land governance. Three reasons can be given.

Firstly, one cannot assume that the EU can be the only external actor that bears significant influence on institutional change processes.<sup>29</sup> Focussing solely on the EU’s influence can make it difficult to isolate drivers of change (Fagan 2012:548). To understand why and how an institution changes, be it in accordance with the EU’s agenda or not, the influence of a wider array of actors must be explored. It requires examination of the interactions between formal and informal actors; the influence of “transnational coalitions” (Jacoby 2006), as well as wartime conflict networks. For each may be positioned to alter the extent of “state weakness” (Kostovicova and Bojicic-Dzelilovic 2008:4) as well as the impact of state-building and European integration efforts. After all, when the EU became more involved in Bosnia and Kosovo, it entered an already crowded stage of external actors

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<sup>27</sup> Thereby the EUSR effectively replaced the role of the United Nations Special Representative in Kosovo. See part II.

<sup>28</sup> See chapter 2.

<sup>29</sup> This would be a bold claim even during earlier Enlargement processes (Dimitrova and Buzogány 2014:144).

ving for influence (Donais 2005; Fagan 2012; Juncos 2012; Uberti, Lemay-Hébert, and Demukaj 2014). International Financial Institutions (IFIs); western donor agencies and (donor-funded) NGOs also exerted pressure on local institutions, and contributed to the emergence of “new modes of governance” (Fagan and Sircar 2015:16–17). In short, to analyse change, the thesis argues that it needs an approach to governance that accounts for a potentially large number of actors exerting influence.

Secondly, had the thesis focussed solely on the EU, this might have lead it to overlook structural factors that co-determine processes of institutional change (Fagan 2012; Strazzari 2012), including wartime legacies (Woodward 2011:106) and economic developments like external financial crises (Pula 2014). As empirical evidence increasingly pointed to the limits of the EU’s influence in the region (see below) the Europeanization literature took to focussing more on such structural actors with the so-called “domestic turn” (Elbasani 2013b). This meant that scholars focussing on the Europeanization of these countries placed particular emphasis on uncovering the “domestic obstacles” (Elbasani 2013a) and “deep structures” (Fagan and Sircar 2015:6) that appeared to constrain the scope for (externally-driven) change in particular areas of governance. A similar focus seems to have emerged in the state-building literature (Berdal and Zaum 2013:6–12). This thesis therefore conforms to this trend by seeking to understand the factors that structure incentives in specific domestic contexts, or ‘action situations’, in quadruple transition (see chapter 1).

Finally, by not mainly focusing on the EU integration process one may analyse a broader time-frame and scope of change. A narrow focus on EU-driven change processes may lead to the mistaken assumption that institutional change processes begin and end with the EU’s engagement and are thus necessarily linear.<sup>30</sup> Even when compliance with an external agenda occurs, this does not necessarily mean this transpires free from influence of historical structures and complex webs of local interests (Berdal and Zaum 2013:6–7 cf. Strazzari 2012:587). One can avoid such errors by taking a longitudinal focus. This means observing post-conflict situations, and the rules that govern them, over a longer period: both prior to, and after the intense involvement of external actors like the EU. This

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<sup>30</sup> Either compliance with EU conditionality and rules occurs, and the country in question progresses toward membership, or it does not comply and does not progress (for a critique see Bieber (2018); Dimitrova (2010)).

may help uncover how certain actors are positioned to exert temporary or long-term influence, and lead to a better appreciation of how structural factors determine institutional change processes.

### *The focus on land governance and case selection*

To justify the empirical focus on particular cases of land governance change, the thesis first must define “governance”. Governance is here understood as a “process” where actors follow a

“repertoire of rules, norms, and strategies that guide behavior within a given realm of policy interactions [in which rules] are formed, applied, interpreted, and reformed...(McGinnis 2011a:171).

Land governance pertains to the formation and reconstitution of rules that actively constrain or enable socio-economic and political interactions and outcomes regarding land; rules like land rights.<sup>31</sup> Yet land governance may also involve rules that institutionalize what knowledge is commonly available about land. For instance, public records about who has land rights to a particular parcel. Processes of land governance change are central because the rules that emerge from them can become the foundation for many economic activities and institutional benefits, or what the thesis describes as natural and artificial rents (see chapter 1). For instance, public records recording land rights (land records) may inter alia determine who can collateralize their property, and who cannot (De Soto 2000). Land governance thus matters in setting the institutional conditions for actors to access land and its rents.

Elinor Ostrom (1990:48) took a rational choice perspective to understanding resource governance change. She theorized about situations where no institutions or authorities appeared to regulate access to a natural resource, like land. In such cases, any formal institutional rules governing the resource, like those of a nation state, can be said to be no longer ‘in-use’. Yet alternative factors could still change the game of accessing the resource. Instead of institutional rules, resource access might be

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<sup>31</sup> For a further explanation of this rational choice institutionalist understanding of resource governance, and a typology of land rights (Ostrom 2008:28-29) see chapter 1. The World Bank (Deininger and Feder 2008) and FAO describe land governance along comparable lines (the FAO refers to “land tenure” systems that can ensure “a person’s rights to land will be recognized by others and protected in cases of specific challenges” (Cox 2002:18).



regulated by rules that are informal, or simply physical, like natural or human force (Ostrom and Hess 2007:26-27; Umbeck 1981b). However, institution-less situations would tend to make resources overused or even inaccessible. This problem is here called the problem of unregulated access<sup>32</sup>, and in land governance, the problem of unregulated land access (see chapter 1).

Empirical studies show that problems of unregulated access may be temporary and/or localized. For instance, during the California Gold Rush, windows of opportunity for unregulated access to land-based resources opened in particular areas, yet also soon closed. The specific reasons remained subject to historical inquiry (Umbeck 1981a). This remains so. In recent times, transitions observed in developing and post-communist contexts have created puzzles regarding why and how property rights institutions emerge and evolve differently.<sup>33</sup>

The problem of unregulated access seems to have affected land in Pristina immediately after the end of NATO's intervention in 1999, or Bosnia after 1995. Unruh and Williams note it is usual that after (long) armed conflicts "a significant proportion of affected populations will seek access to new land or restitution of abandoned property". Although they do not call it as such, they describe a post-conflict situation of unregulated access as a situation that may involve:

"refugees and internally displaced persons attempting to return to their lands of origin, dislocatees who cannot or do not wish to return to their areas of origin, and those who were displaced well before a conflict and who view the post-conflict period as an opportunity to regain long-lost lands[; as well as] ex-combatants, opportunists, state actors, and individuals or entities with claims dating back to previous regimes" (Unruh and Williams, 2013:3).

Indeed, in the post-Cold War era such situations of unregulated access of land-based resources were recognized as problematic at the highest levels of international politics. Many policy-makers, scholars and NGOs paid attention to how the problem of unregulated land access could emerge and be resolved. Their particular concerns about this problem have been varied, but generally all are connected to a concern about economic governance.

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<sup>32</sup> Ostrom (1990:48, 2005:212-15) like many others (Borrini-Feyerabend et al. 2013) call this the "problem of open-access". However, to avoid confusion with the key thesis concept of the Open Access Order, the thesis uses 'unregulated access' instead. See chapter 1.

<sup>33</sup> E.g., in developing countries property rights may historically lack consistent enforcement, yet governing elites are frequently able to allocate land via ties of patronage, in return for support for their regimes (Boone and Kriger 2010). In post-socialist transition contexts authorities may fail to regulate land use (Tsenkova 2008, 2009) but eventually establish control over some institutions that can privatize land-based assets (Aslund 2013:186-7).

International policy-makers often highlight the security dimension. The official UN and EU view is that the absence of effective institutions governing land-based resources after conflict constitutes an international security risk. For that absence is seen to make situations more likely where “rights to land will be threatened by competing claims, and even lost as a result of eviction” (Cox 2002:18).<sup>34</sup> Scholars (and NGOs) highlight the risk that land-based natural resources become vulnerable to rent-seeking, as these become particularly valued after conflict: especially when other sources of rent-creation are damaged, old rules are dysfunctional and distributions of power unequal (Zaum and Cheng 2016:461,464).<sup>35</sup> International financial institutions like the World Bank (Deininger 2003, 2004; Deininger, Selod, and Burns 2012) and influential economists like De Soto (2000) accentuate the economic risks for growth and the poor, essentially because unregulated land access tends to inhibit collateralisation and capital formation.

However, these public concerns about (enduring) unregulated access of natural resources shaping post-conflict economic governance have apparently not led political scientists and political economists with an interest in institutional change in Bosnia and Kosovo to investigate this topic.

They have given attention to change and reforms in areas that were peripherally related to economic governance.<sup>36</sup> Yet their focus often was on the regional level (Bartlett 2009; Pula 2014) or on the informal political economy of contested statehood as a whole (Belloni and Strazzari 2014; Divjak and Pugh 2008; Pugh 2004; Strazzari 2012). I.e. the tendency has been toward macro-level analysis. Just a few micro-level case studies from Bosnia and Kosovo focused on analysing change in specific economic sectors (e.g. see Bojicic-Dzelilovic and Kostovicova (2013)) or vis-à-vis particular natural resources (such as Uberti (2013)).

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<sup>34</sup> The United Nations (UN) adopted in 2011 adopted a set of non-binding principles developed by the Food and Agricultural Organization (FAO) for developing land governance. The Guidelines effectively recognized the problem of unregulated access. Also the EU supports the Guidelines because it regards addressing this issue [as] ... one of the key steps towards consolidating peace in post-conflict societies” (European Union 2011).

<sup>35</sup> These problems are not unique to post-conflict environments, but prevalent in other transition and developing contexts (Wren-Lewis 2013). Recently Transparency International has begun to focus on “corruption” in “urban land governance” in developing world contexts: see [https://www.transparency.org/whatwedo/activity/our\\_work\\_on\\_urban\\_land\\_governance](https://www.transparency.org/whatwedo/activity/our_work_on_urban_land_governance) (last checked 13/06/2018).

<sup>36</sup> Particularly on the institutional politics and constraints of the ethnicized constitutional make-up of Bosnia and Kosovo (see e.g. Bieber (2010); Bieber and Keil (2009); Perry and Keil (2015) and Graziadei (2014).

Recently scholars in the state-building and Europeanization literatures have focussed more on sector-level institutional change and natural resource governance (Dodds et al. 2014; Lund 2016; Uberti et al. 2014; Zaum and Cheng 2016). In general, however, comparative empirical research on the drivers of change governance at the level of a particular economic sector or natural resource like land has been limited. Research on land governance change was conducted in post-war Bosnia and Kosovo, yet often remained focussed on one country (Nawaz 2008; Tuathail and Dahlman 2006); one aspect like restitution (Buyse 2008; Kretsi 2007); or on a limited timeframe (Carlowitz 2005; Todorovski, Zevenbergen, and Molen 2012). Other studies of land governance change were not brought in relation to the state-building literature at all (e.g. see Bouriaud et al. (2014).

More comparative and longitudinal research on change in land governance will contribute to understanding processes of institutional change in quadruple transition and help identify agents and structures that matter most in the state-building literature.

The thesis zooms in on three types of cases where problems existed that appeared to create unregulated land access at the start of the quadruple transition in Bosnia and Kosovo. The problems were unorganized land records; illegal construction; and contested land alienation. Rudimentary evidence seen at the start of the research suggested that each of these problems had since been addressed in some way or another.

The first case type concerns land registration governance. This appeared to have become significantly more organized in the past decade in both Bosnia and Kosovo. The World Bank's Doing Business Index (DBI) suggested "registering property" in land records had become much easier. In 2004, a person on average needed to spend 331 days and around six percent of the total value of their property to register it. By 2015, just twenty-four days and around five percent of the total value was needed (Obradović, Zimić, and Bačić 2016). Kosovo also saw its performance on this

ranking increase: between 2012 and 2013 alone, Kosovo moved up nineteen positions on the global ranking to the 98<sup>th</sup> position (World Bank 2013b:Annex.3).<sup>37</sup>

In land use governance, Kosovo's capital was seen to finally address the illegal construction boom that had started in June 1999, as mentioned earlier (Borger 2014). In Sarajevo, a boom in turnkey construction projects and investment from the Gulf States also suggested the existence of a significant drive to change institutions governing land use (Economist 2016). This observation was interesting, as the DBI for the ease of securing a construction permit suggested that processes for obtaining such permits in Pristina and Sarajevo had hardly changed and that they remained (very) slow.<sup>38</sup>

Finally, also land alienation governance appeared to have changed. In spite of problems with contract enforcement (IMF 2011:21, 2015a:12; Uberti 2014:492)<sup>39</sup> major foreign land deals occurred in two rural areas in Bosnia and Kosovo in 2015 (Al-Arabi 2015; Hajdari 2015). These deals seemed significant mainly because the authority over alienating land had long been contested in both areas. Moreover, both land deals constituted the highest-value real estate investment and the single largest FDI inflow in the post-war history of Bosnia and Kosovo.<sup>40</sup> This suggested a shift in the ability of both countries to transfer land rights and to attract (foreign) land investment.

In short, the cases suggested Bosnia and Kosovo moved beyond the state of unregulated access in land governance. Yet questions remained: what drove this land governance change? Who was involved and how? What did the outcome mean? Did the new forms of land governance curtail opportunities to engage in rent-seeking and help create a level economic playing field, as liberal state-builders might hope, or realise the obverse?

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<sup>37</sup> The Doing Business report of 2016 ranks the quality of property registration services of 189 countries —<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/> (last checked 13/06/2018). By 2016, Bosnia-Herzegovina was just twelve places below France and one place under Malta on this ranking (at the 97<sup>th</sup> rank). By 2017, Kosovo ranked 33<sup>rd</sup> on this ranking property registration—<http://www.doingbusiness.org/data/exploreeconomies/kosovo/> (last checked 13/06/2018).

<sup>38</sup> Source: <http://www.doingbusiness.org/Custom-Query> (last checked 13/06/2018) The DBI uses the process for building a warehouse in the capital city as a proxy for the country's score. In 2017 Kosovo ranked 129<sup>th</sup> on "dealing with construction permits" <http://www.doingbusiness.org/data/exploreeconomies/kosovo>; Bosnia 170<sup>th</sup> <http://www.doingbusiness.org/data/exploreeconomies/kosovo> (last checked 13/06/2018).

<sup>39</sup> Bosnia ranked 81<sup>st</sup> on the DBI for enforcing contracts in 2016 (<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina#enforcing-contracts>); and Kosovo 75<sup>th</sup> in 2015 (<http://www.doingbusiness.org/data/exploreeconomies/kosovo> (last checked 13/06/2018)).

<sup>40</sup> See chapters 5 and 8.

## *Exploring the limits of institutional change in economic governance*

The significance of investigating these cases is that it allows the thesis to explore the purported limits of institutional change in economic governance in Bosnia and Kosovo.

First, state-building scholars have often argued that externally-driven attempts to adopt and implement new laws and reforms in contexts like Bosnia and Kosovo were inhibited by domestic “state weakness” (Fearon & Laitin 2004:6–7). Possible causes included dysfunctional “authority structures” (Krasner 2004) and limited “administrative capacity” (Dimitrova 2002; Ganey 2001). Also non-state actors were seen to undermine the state’s “shadow of hierarchy” (Risse 2010; Fagan & Sircar 2010; Fagan 2010), with internal and external actors contesting the state’s sovereign authority (Risse 2010:6–7). Some saw an inability of domestic governments to involve local stakeholders in particular areas of governance (Fagan 2013).

Recently scholars like Lund have suggested it may be better to not make grand macro-level claims about state weakness or “failure”, simply because state-building is a continuous process (2016).

Moreover, some areas or sectors might lack capabilities or authority to implement or enforce laws, yet such problems may not necessarily be all pervasive or enduring, as suggested above (Börzel & Risse 2010:118–120). This thesis argues that by zooming in on land governance it may be possible to better understand why institutional changes in some areas *are*, and are not possible.

Second, scholars may have overestimated the extent to which actors with interests in maintaining the status quo in Bosnia and Kosovo can influence economic governance arrangements. As noted, conflict networks have often been seen as influential in terms of blocking reforms that threatened to undermine their acquired wealth and power (Bojicic-Dzelilovic and Kostovicova 2013; Danielsson 2014; Stroschein 2012; Capussela 2015:26). Yet there are reasons to believe that sometimes such politically ‘controversial’ institutional changes are possible. For example, Buyse, in her study of the process of enabling restitution in Bosnia, suggested that

“complete consensus of all actors involved is not necessary. When the most powerful or influential ones achieve consensus...a norm may become effective...By studying the underlying interests, one may be able to explain the emergence or dissolution of such consensus” (Buyse 2008:346).

Moreover, governing elites may not always act rationally. They may misinterpret their own ability to control outcomes of particular reforms. Vachudova gives the example of a Croatian prime minister failing to anticipate that the anticorruption laws that he supported might be used to investigate his own economic stakes and conflicts of interest (Vachudova 2014:129). Recent protests in Bosnia may also have demonstrated that political or economic crisis may cause governing elites to cooperate with liberal state-builders to drive economic reforms that they previously resisted (Arapovic and Omerbegovic 2017:156–57; Hamilton and Toperich 2017:v). These examples suggest that changes that perhaps seem contradictory to the interests of influential actors with privileged access to existing economic opportunities are sometimes still advanced. Focussing on these case studies may help gauge to what extent the state-building literature overestimates the power of certain actors in preserving a particular political-economic status quo, and underestimates the possibility that certain factors may incentive them to adapt and realign their strategic interests.

Third, state-builders in Bosnia and Kosovo are sometimes seen to have inadvertently contributed to the limits of institutional change in economic governance. E.g. Belloni and Strazzari (2014) explained how status quos, where collusion between criminal and governing elites endured, and where external actors cooperated with those same governing elites, resulted from an unspoken bargain: externals provided governing elites legitimacy as a negotiating partner, and in return they would receive assurances of political (and regional) stability (Belloni and Strazzari 2014). Similarly, Cheng and Zaum (2012) referred to the “primacy of stability”: liberal state-builders would hold back on pushing for anticorruption reforms if this meant risking a return to social instability and violence. Others suggested external actors like the EU may have failed to “adapt” even as “gate-keeping practices of the (ethnic) networks of political-business elites” endured. The result: “a small number of well-connected,

rent-seeking individuals and groups have been able to capture large swathes of the local economy” (Bojicic-Dzelilovic et al. 2016:13).

Overall, it may well be that external actors limit the overall scope for institutional change in this way. Yet the obvious point can still be made that said interactions between external and domestic actors may well vary across time and (economic) governance areas. Again, empirical investigation into cases of land governance change may help explore the purported limits of institutional change in economic governance in countries like Bosnia and Kosovo.

Finally, the broader empirical literature on institutional change and land governance in developing contexts provides other reasons to be sceptical about these alleged limits.

For instance, research by De Soto (2000) suggested that the inability of developing countries to collateralize real estate is linked to unclear land titles. Recognition of this can become a powerful motivating force to enable changes to land registration governance. Once aware of the opportunities of a functional land registration system, elites may be co-opted to effect institutional changes in response (De Soto 2000:194). Indeed, Biddulph’s study (2014) of a World-bank supported land registration reform project in post-conflict Cambodia suggests that government actors may suddenly become open to such changes; even if they may ultimately decide to hold back on them if full transparency may reveal murky real estate deals between political and economic actors.<sup>41</sup>

Further, as illegal construction expands or remains unaddressed natural resources like water may be polluted (Ostrom and Ostrom, 2014:27); public parks turned into concrete; and the accuracy of land records lost. In such situations, a whole range of actors may call for solutions. Even squatters themselves may do so, seeking legalization or at least de-facto acceptance of their homes from the authorities (Payne 1989). Thus may arise calls and collective actions for bottom-up or top-down solutions to problems of squatting and illegal construction (Hirschman 1963:258).

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<sup>41</sup> At a recent conference at the World Bank, the author learnt that even the governments of Belarus (Khadasevich 2017) and Russia (Koltoniuk 2017) have pushed to modernize, unify and digitize their land registration systems (with World Bank support).

Governing elites may opt for broader reforms if they perceive that basic conditions for attracting land investments are not present (Verdery 2003:11). E.g. they may create institutions that may allow the government to alienate assets like land in different ways, such as through leasing or privatization (Aslund 2013:186-7). Or they may find that certain institutions are ‘prerequisites’ for maintaining (post-conflict) stability and reliably attract investments, such as independent courts and other dispute settlement mechanisms that project a ‘rule of law’ (North, Wallis, and Weingast 2009). However, governing elites may also look for substitutes to a fully functioning rule of law. Rather than keeping the option of “legal recourse”, investors may rely on building and maintaining “long-term, personalized relationships” with politicians and authorities to secure privileged access to a valued resource (Rodrik 2008:3-4).

It seems worth finding out whether actors facing problems of unregulated access are motivated to drive changes in land governance “to safeguard their own positions” (Tuma 2013); because there are ready-made solutions like external reform agendas or technologies<sup>42</sup> on offer; or because they come to confront certain problems and learn how to cope with them (Andrews 2015). Using such theories to explain change in the context of Bosnian and Kosovar land governance may also help explore the limits of institutional change in similar contexts.

## **Research methods, scope, data and ethics**

The case studies start with the problems in land registration, land use and land alienation governance that were observed to exist immediately after conflict. However, the focus is on explaining the processes of change that subsequently followed, up to the outcomes in 2015 described above.

It therefore uses process tracing as its principal method. This allows the researcher to observe the historical context of a particular case and identify steps that led to a certain outcome (George and Bennett 2005). This method has been widely considered useful for finding out original causes of

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<sup>42</sup> E.g. countries may obtain loans from the World Bank to finance modernisation and digitization of systems for updating land records which may help ease accessing information relevant to private and public enterprise (Adlington 2010; Deininger et al. 2010).



historical processes. It helps describe how structure and agency interact in such processes. Also the sequence with which variables impact upon a given situation may be elucidated. Further, it fits well with the case study method (Venesson 2008). Process tracing has also been regarded as appropriate for analysing changing governance comparatively in fragile post-conflict contexts, like Bosnia-Herzegovina, where an array of domestic and external actors are structurally positioned to influence reform processes and institutional outcomes (e.g. see Fagan and Sircar (2015:7)).

Venesson notes that the method helps discover whether a particular collective-choice problem in a “fragile” context consists of “a collection of problems”; and how each of these problems possibly involves “different groups and organizations” playing different roles in “coalition-building and joint-efforts” (Venesson 2010:18). He argues that discovering this multi-layered-ness of problems also helps understand fragile contexts that are typically dominated by informal hierarchies and patronage networks driven by self- and regime preservation (idem).

Yet the method may also lead to discoveries of the kind Albert Hirschman looked for: i.e. “why and how societies facing fragile situations can begin to change as they are” (Venesson 2010:15). By tracing “the behaviour of decision-makers in problem-solving situations” over the long-term, this method may help study how actors approach, learn from, and actually circumvent “well-entrenched obstacles”. The narrative may thus reveal how certain structural “conditions and attitudes” can possess “ambivalent” qualities: inhibiting change at certain times, but at other times enable it (Hirschman, 1963:4-6). Discovering such “hidden rationalities” or “hidden positive dimensions” may challenge notions that “prerequisites” and limits to change are rock solid (Hirschman 1963:5 cf. 1992:91).

Thus, the method serves this research. Using it, I may uncover some of the limits and possibilities of change in usually sclerotic transition contexts, and thus contribute greater understanding of the “essence of the process of change” in fragile contexts (Hirschman 1963:6-7; Vennesson 2010:16-17) like Bosnia and Kosovo. This may also help the state-building literature to not to overemphasize the prerequisites of (institutional) change. In short, change in quadruple transition contexts may become more intelligible for scholars and policy-makers alike.

Most of the data collected using this method is qualitative, as it is for this thesis. This means using “histories, archival documents [and] interview transcripts” through which the thesis may establish “whether the causal process of the theory that he is using can be observed in the sequence and values of the intervening variables” (Venesson 2010:9-10). The reliance on qualitative data has the advantage over quantitative data that it can be more perceptive to contextual detail. However, process tracing also permits combining long-form descriptions with analytical concepts.

The heart of this thesis’ data stems from field work conducted between the Spring of 2015 and the Spring of 2016. The bulk of the field work took place over five months spent in Bosnia and Kosovo. During the Spring and Autumn, I was in Kosovo, and in late Autumn and Winter in Bosnia. I collected data through conducting around one hundred semi-structured elite interviews. I wanted to triangulate evidence (for reasons further discussed in chapter 1), so the interviewees were from diverse epistemic communities. I thus had to familiarise myself with multiple and diverse fields of policy-making and implementation. Interviewees included current and former politicians, bureaucrats in land governing institutions, as well as members of the judiciary, the private sector, international organizations and civil society. I followed up via e-mail to verify or gather additional information and conducted further interviews outside the region with individuals formerly or currently involved in the observed change processes. In addition, I attended multiple policy-maker conferences and stakeholder events and consulted primary and secondary documentation. I also uncovered original (quantitative) data (in local language(s)) that was sometimes previously inaccessible to the public.

The scope of the research and data selection was determined by the research questions and case studies on the observed processes of change. I thus sought to answer the research questions (mentioned above) for each: i.e. why and how these processes occurred, and who was involved, and with what outcome. Generally, these questions were at the heart of the semi-structured interviews. However, field work data were also collected regarding issues of anti-corruption, economic efficiency and environmental and normative politics, which where relevant, are not excluded from the thesis. The length of the field work also influenced the scope of the research. The research observed change

processes until roughly the end of 2015, i.e. when field work conducted in the region was completed.

Finally, a reflection on research ethics. As I relied on interviews, many of them including confidential information, I was cautious in representing the data. As a matter of principle, I checked with interviewees whether and how they wanted to be attributed: with their name and title, function or simply on background. I ended up separating interviewees into named and anonymous categories (see appendices). Where interviewees had asked me to check later if they wanted to be on record, I checked. If I was unable to do so, I anonymized them. If acquired information was only on background, I tried to find official documentation that provided similar information, or conducted additional interviews. If I was unable to do so, I left it out of the thesis.

There were some interviewees who had agreed to go on record but who gave statements that involved allegations of crime and corruption vis-à-vis named individuals, including individuals currently in power. In such cases, I anonymized interviewees to avoid risking their reputations or livelihood. In addition, I verified accusatory claims where possible. I did so by finding primary and secondary documentation that made similar accusations. If possible, I interviewed parties who were (familiar with those) at the receiving end of allegations heard. Triangulating in this way also helped deal with possible biases of interviewees and my own. The research has sought to give the data as much space as possible by choosing the process tracing and case study method.

## **The organization of this thesis**

Part I sets the stage for the case studies. Chapter 1 outlines the research's new institutionalist approach, analytical framework and theories of land governance change. It sets out the analytical concepts that describe phenomena throughout the rest of the thesis, as well as the theories that are proposed as explanations of the observed processes. Chapter 2 provides background and further justification for the selection of the case studies. It outlines the origins of key problems in land governance that the Yugoslav successor states inherited after the Yugoslavia's collectivism and conflict

formally ended. It also discusses the main problem-solving approaches of external actors that emerged afterwards and how these possibly helped resolving these problems.

Part II and III respectively describe the cases of land governance change in Bosnia and Kosovo in quadruple transition. With reference to the analytical concepts outlined in chapter 1, these case studies reveal the observed change processes in land registration, use and alienation governance. The chapters describe changes in relevant factors –including the changing performance of old and new land governance laws and institutions; changes at a state, society, economy and community level; and changes in biophysical patterns of land use– that shaped the incentives, behaviours and interactions of domestic and external actors in the observed change processes; as well as the form of economic governance.

The thesis ends with three sets of interconnected conclusions that are based on the case study research in part II and III and the theoretical framework outlined in chapter 1. The conclusions discuss which of three theories used to answer the research question explain the observed processes of change in Bosnian and Kosovar land governance.

The first set of conclusions is that processes of land governance change are slow to emerge in the Bosnian and Kosovar quadruple transition. The cases show that these typically took many years to emerge. Using Ostrom’s rational choice institutionalist analytical framework, and a longitudinal perspective, the research finds that this was in part because these problems were historically complex and inter-related. Problems of unregulated land access endured and compounded each other and thus created structural rent-seeking opportunities and vested interests in the status quo.

Second, Bosnian and Kosovar governing elites appear to begin to drive land governance reforms when they recognize the economic impact of unregulated land access, yet subsequently do so differently. The evidence suggests that the former drive land governance reforms only if these align with narrow elite interests and consolidate rent-seeking opportunities that they control. This leads to confirmation of the Limited Access Order Consolidation theory in the Bosnian cases. Kosovo’s elites

drive land governance change in ways that appear more inclusive, that are driven by trial and error processes, and that have open-ended outcomes which may possibly limit rent-seeking opportunities. This leads to confirmation of Problem-Driven Iterative Adaptation theory. The difference suggests that Kosovo's reformers recognize that the economic fragility caused by enduring land governance problems leaves them little choice but to continue to adapt.

Third, the previous two conclusions suggest that the possibility of increasing land rents more powerfully explains land governance change than the introduction of externally offered solutions (the third, Solution and Leadership Driven Change theory). In other words, domestic elites have strong endogenous reasons to reform land governance in quadruple transition. This seems particularly so if fragility in land governance persists pervasively, as observed in the cases from Kosovo. Liberal state builders may help lock-in land governance reforms if they can commit support over the long-term and adapt their externally-derived solutions to the interests of local governing elites.

Finally, the thesis remarks upon its shortcomings and venues for further research.

# I

## Setting the Stage

# 1

## **The Institutional Approach, Analytical Framework & Theories of Land Governance Change**

This chapter provides a framework that can explain and compare the observed processes of change in Bosnian and Kosovar land governance. It first introduces a core concept of the thesis, governance, and discusses institutionalist approaches. It argues why it finds Ostrom's rational choice institutionalist approach most appropriate for analysing land governance change in Kosovo and Bosnia. The second section constructs an analytical framework. This first lays out the concepts of rents, rent-seeking, and access orders terminology of North, Wallis and Weingast (2009). It then explains how these fit with Ostrom's Institutional Analysis and Development (IAD) Framework (2005), and discusses the framework's limitations. The final section lays out the three theories of land governance change and their hypotheses, and considers their potential shortcomings and how these may be addressed.

### **The concept of governance**

This thesis assumes a concept of governance that can account for the variable number of actors involved in changing land governance as societies transition between forms of economic governance or types of "access orders" (North et al. 2009- see below).

Conceptualization about governance matters. For it co-determines what, and particularly, who the analyst believes is involved in institutional change processes. In political science, the so-called old institutionalists used governance as a concept to study the evolution of political institutions. For instance, Eckstein argues that studying institutions is a "science of the state" and "public laws that concern formal governmental organizations (Eckstein 1979:2). Rhodes, who agrees with Eckstein,

states old institutionalism can comparatively analyse how formal “political institutions” like “written constitutional documents” evolve; and thus transform “beliefs and practices” (Rhodes 2011). Old institutionalists seek to perceive how rational politicians “modify their contingent heritage” (Bevir and Rhodes 2003). State executives are thus assumed to be central; and other types of actors to be less relevant. Bureaucracies, for instance, are viewed simply as implementers of executive orders that act through “procedures”. The question is mainly how well those procedures are carried out (i.e. in accordance with the law and ideal-type standards of impartiality, meritocracy, professionalism (Weber 1978[1922]:220–21). Essentially old institutionalists presumed governance is conducted by government; it emanates from a central point, from where it can project hierarchical authority within a political system.

This notion was changing by the 1970s. Scholars of Western European and American political systems began using ‘governance’ to capture the interplay between complex webs of local, national, international and global actors. The idea that mainly representatives of Westphalian, sovereign states were involved in changing institutions was being challenged (Bull 2012[1977]). Meanwhile, development scholars like Migdal (1988) described how the ability of states to carry out reforms and enforce regulations actually varied. Some states were simply too “weak” relative to societal actors with capacities to resist state-led governance. Others pointed out that in democratic political systems, a patchwork of fragmented and overlapping jurisdictions, administrative hierarchies and civil associations could not be ignored in understanding institutional change processes (Ostrom 2008[1973]:24–29,77). Similarly, public choice theorists contended that it was a mistake to exclude the role of bureaucrats in understanding institutional change processes. They were not simple agents tasked to implement policy agendas designed by their principals. Rather, one could expect they were providing inputs to those agendas to serve interests of their own (Buchanan and Tullock 1962).

The end of the Cold War, particularly the fall of collectivist authoritarian regimes in Central and Eastern Europe, accelerated the shift to new concepts of governance. As differential patterns of



change in economic and political institutions became evident across transition and developing countries, old institutionalist explanations for institutional change processes seemed too narrow. Rhodes still contended that it was worthwhile to focus on the origins and evolution of political institutions like the constitution, including in transition contexts (Rhodes 2011). Yet with multiple social, economic and political institutions in flux in post-socialist states, often changing simultaneously (Offe 1991), the old institutionalist foci now seemed too narrow.

Especially from the 1990s, a host of ‘new’ non-state actors had begun to seem relevant. Views that equated government with governance seemed deficient. For instance, in transition countries, scholars sought to account for the role of supranational organizations like the EU (with its “transformative power” in driving institutional changes (Grabbe 2006; Radaelli 2002)); but also corporations and civil society actors (Aspinwall and Schneider 2000). Further, criminal and informal networks sometimes appeared to use deep ties and shared experience to influence formal decision-making (Pickles and Smith 1998). Others saw such networks capitalizing on new “opportunity structures” created by “new wars” (Kaldor 2013) and aid (Holt and Boucher 2009). Finally, there were transnational coalitions (Jacoby 2006) driving domestic change in compliance with external (EU) rules, sometimes even where no external rules existed (Parau 2010). In short many considered sovereign Westphalian governments no longer as the only actors in governance.<sup>43</sup>

Many scholars thus came to abandon a narrow concept of governance, particularly vis-à-vis transition countries (e.g. see Hooghe and Marks 2001; Swyngedouw 2004). A ‘new’<sup>44</sup> mode of governance literature emerged. This literature has stressed that governments are important but not only as decision-makers, but also as implementers and enforcers. Governance can occur horizontally as well as hierarchically. Governance can occur at multiple levels and involve many actors that are outside government, but somehow connected and networked with it. This has led to a new set of investigations: e.g. to what extent a “shadow of hierarchy” exists, i.e. the executive and administrative authority to enact and implement “legislative and executive decisions” in specific sectors and

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<sup>43</sup> Some challenged the idea they ever were thus (Oslander 2001).

<sup>44</sup> This ‘newness’ is debatable. See footnote above.

territories (Héritier and Lehmkuhl, 2008). However, the view that there has been a shift from government to governance, from the power of state executives to networks of state and non-state actors, has also been challenged. For example, Moravcsik (1993) argues that the decision-making power and authority of hierarchical states remains essential for non-state actors like the EU, without which it cannot operate, or even exist. State-centric approaches can be justifiably used to analyse EU foreign policy (Thomas 2012:460) but also specific areas like rule of law assistance (Schimmelfennig 2012).

Still, a conception of governance that accounts for multiple levels and actors may be defended within the right context. Hooghe (1996), for example justifies such a concept of governance by pointing out that it helps one appreciate particular policy processes inside the EU. Those processes structurally involve vertically and horizontally organized networks of state and non-state actors who interact at local, regional, national and supranational levels, and who thus co-determine those processes. Further, the EU itself is seen to be involved across a broad spectrum of institutional change processes. Hooghe and Marks (2001) thus refer to a concept of “multilevel governance”.<sup>45</sup>

This thesis follows those who have critiqued narrow views of governance. In the introduction it already defined the concept of “governance”<sup>46</sup>. This concept can account for actors

- working at *multiple levels*, including at a “local, provincial, national, regional, global” level;
- with *different foci*, including those with a “general purpose” and a “specialized, cross-jurisdictional” focus;
- that are engaged in multiple *sectors*, including “public, private, voluntary, community-based” sectors;
- that have specific *roles* in providing a particular (public) good or service, including through financing, “coordination, monitoring, sanctioning, and dispute resolution” (McGinnis 2011a:171-72).

This concept of governance fits this research. Firstly because it allows consideration of the different roles played by various domestic state and non-state actors in institutional change processes in

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<sup>45</sup> This has been widely used in the Europeanization literature: see e.g. Callaghan (2010) James (2010); Radaelli (2003); Thatcher (2007)(from Dodds et al. (2014:453)). Lange et.al.(2013:407) provide a similar, less EU specific concept of governance. The literature and debates on new modes of governance is vast, and this is not the place to counter all the critiques and alternative approaches and definitions in detail and across contexts. See e.g. Bevir (2010) and Stephenson (2013).

<sup>46</sup> See introduction (28).

quadruple transition. For it also accounts for the differential institutional outcomes that emerge across sectors and within states' territorial boundaries. Like the concept of Hooghe and Marks (2001), it can anticipate that a liberal state-building actor (like the EU in Bosnia and Kosovo) can play both the part of an external and an embedded actor. In brief, this concept of governance fits the “limited statehood” and quadruple transition contexts that were discussed in the introduction (Börzel and Risse 2011). Secondly, it suits the focus on land governance, where typically both the number of actors and their capacities to enforce and change institutional rules like land rights varies across jurisdictions (Deininger et al. 2012; Fischel 2015; Pennington 2002). Finally, it allows for linking with the rent-seeking and access order terminology and theories of change that assume institutional change processes involve a few or many actors.<sup>47</sup>

### *New institutionalist debates on governance in quadruple transition*

Political scientists and political economists who subscribe to “new institutionalism” agree that “institutions...matter” (March and Olsen 1989; North 1990). They understand governance from the perspective of institutions and perceive institutions as rules that are socially constructed, that can evolve and formally or informally regulate human action. They also agree that institutions are a salient way to understand social action, interaction and outcomes. To be brief, it may be said that they regard institutions as “artefacts subject to human intervention and change” (Ostrom and Ostrom 2014:99).

Yet new institutionalists debate why and how institutions and new modes of governance change, emerge and disappear. They argue about the role of structure and agency in institutional change processes. Considering these different views seems especially appropriate in domestic contexts where statehood itself is contested and influenced by liberal state-building processes.

While it is possible to identify several new institutionalist approaches in the state-building, international relations and Europeanization literature, this research follows Checkel (2001:581) and

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<sup>47</sup> As McGinnis (2002:66) notes, this concept of governance, which fits the IAD analytical framework (see below), allows for the “possibility that a single dominant coalition will be able to control all essential decision structures”, including for driving institutional changes to the benefit of its sectional interests and at expense of other interests.

Mastenbroek and Kaeding in identifying two “umbrella approaches” (2006:340). Each has a different emphasis on how structure and agency drive institutional change in domestic contexts.

Rational choice institutionalism (RCI) highlights individual agency that may be structured by institutions. This perspective, in brief, suggests that the humans in different contexts tend to act differently because institutions, not the nature of the actors themselves, significantly differ across those contexts (Kiser and Ostrom 2000:8).

Although individuals are the basic unit of analysis in RCI, its core assumptions are often extended to larger actors like states. Actors are expected to behave rationally. That means they choose consistently between different options in accordance with their preferences (Mastenbroek and Kaeding 2006, 340-1) and that they recognize a “a logic of consequences” (March and Olsen 1989). The analyst can thus anticipate that actors behave in self-interested, cost-benefit calculating and utility maximizing ways, but to do so within certain institutional constraints (Hall and Taylor, 1996). Institutions are understood as ‘rules’ that structure the ‘game’ of human action. They may change the order of preferences, constrain or enable actors and limit or increase the type and number of actions that they can (rationally) choose between. Further, typically, RCI takes “identity and interest formation” as given (Risse 2000:3), meaning that it is normally insignificant in their approach to understanding why forms of governance, rules and institutions emerge and disappear.

Analysts drawing on RCI therefore tend to see institutional change processes as “instrumental” or functional, i.e. “guided by the [expected] outcome of action” (Risse 2000:3). Institutional changes arise because actors use rationale, and purposefully rank preferences and choose between them. They are assumed to be able to choose efficient ways to attain particular ends that are useful to them. That said, RCI scholars may disagree about how new modes of governance and institutions emerge: be it through the deliberate, coordinated efforts of actors that seek to realize a particular “institutional

design” (Elster, Offe, and Preuss 1998); or unintentionally through a collection of separate, uncoordinated but deliberate actions.<sup>48</sup>

There are many examples of scholars using typical RCI approaches to understand governance and institutional change in contexts where external and domestic actors may be positioned to drive institutional change. Mastenbroek and Kaeding summarize research in the Europeanization literature (2006:340): RCI analysts show that the range and frequency of institutional change processes may be affected by structural factors like differential “national reform capacity” (Héritier et al. 2001) and the location and number of “veto points” (Haverland 2000). These processes may also be affected by shifts in the “differential” means that “empower” actors to drive changes (Cowles and Risse 2001) as well as “adaptational [sic] pressure from above and below” (Börzel and Risse 2003). The pressure from above includes the EU’s hard or direct “active leverage” vis-à-vis domestic actors in accession countries (Vachudova 2005:5). Such pressure may come from below in cases where actors have mistakenly presumed that new rules can be designed and institutionalized without including or securing “acceptance” from key stakeholders (Andrews, McConnell, and Wescott 2010), such as in post-conflict state-building contexts (Stroschein 2012). One can also think of cases where extra-legal or de-facto land use is so widespread that authorities are forced to adapt and legalize squatter claims (De Soto 2000:148–49, 171–72).

The other umbrella approach, Sociological and Constructivist institutionalism (SCI) highlights the importance of “beliefs held by domestic actors” (Mastenbroek and Kaeding 2006:340). Beliefs and ideas are not taken as given, but “socially constructed”.<sup>49</sup> The key assumption is the “a logic of appropriateness” (March and Olsen 1989). This means that the analyst assumes actors attempt to find and fit rules that suit a social environment (Mastenbroek and Kaeding 2006:4). Institutions are only able to shape behaviour in so far as they are rooted in shared ideas (Wendt 1992).

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<sup>48</sup> I.e. where societies “stumble upon establishments, which are indeed the result of human action, but not...human design” (Ferguson 1767). Claims that institutions, like money or markets, emerge thus, remain contentious (Smith 1976[1776];cf.Graeber 2011:44–45).

<sup>49</sup> This means that “collective norms and understandings constitute the social identities of actors” and “rules of the game” in which actors find themselves in their interactions” (Risse 2000:5).

As examples of this approach, Mastenbroek and Kaeding summarize research (2006:340) that highlights how “dominant belief systems” (Héritier et al. 2001) influence the possibilities for institutional change. To be initiated, such change processes may require ‘norm entrepreneurs’ like the EU (Börzel and Risse 2003). Moreover, institutional change may depend on actors first learning the new rules and adapting identities before it restructures their behaviour (Checkel 2001). In other words, new formal rules may need to be internalized before they can be put into use (DiMaggio and Powell 1991). SCI scholars typically argue such learning tends to take time (Börzel and Risse 2000:10).

A third new institutionalist approach is a blend of the two umbrella approaches. This is sometimes called the “multivariate approach” (Fagan and Sircar 2015) but is here equated with historical institutionalism (HI).<sup>50</sup> HI emphasises “path dependence” (Pierson 2000). Here “path” refers to the core RCI idea that actors’ choices have consequences. Choosing an action vis-à-vis one institution may enable certain future actions while foreclosing others. The HI analyst thus highlights the importance of legacies, sequencing reforms, and generally the opportunity costs inherent in decision-making (Bulmer 2008; Thelen 1999). “Dependency” refers to the SCI idea that certain behaviours are sticky and thus enduringly influence strategic choice behaviour, as well as the RCI idea that differential capabilities between actors exist, but that these may become entrenched (Noutcheva 2009). Thus both logics, of appropriateness and of consequences, underpin HI (Mastenbroek and Kaeding 2006:349).<sup>51</sup>

This approach allows for a complex understanding of the drivers of institutional change. As mentioned in the introduction, recent studies of institutional change in the Western Balkans highlight the “deep structures” that hold back EU-driven institutional change processes, like complying with the *acquis* (Elbasani 2013b). These scholars appear to adhere to this approach. For deep structures can

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<sup>50</sup> Checkel (1999) categorizes HI as a sub-branch of RCI, as individuals also constitute the core unit of analysis.

<sup>51</sup> Recent examples in the Europeanization literature are Papakostas (2013); Vachudova (2014) and in literature specific to areas of limited statehood and state-building Juncos (2012); Borzel (2013); and Dolenc (2013).

mean that institutional capacity in implementing reforms is structurally weak because of socialism and/or conflict. Yet it may also be that certain networks of special interests can act as veto players because of historical legacies. Legacies may also lock-in particular behaviours and identities that make external attempts to adopt new institutions and modes of governance ineffectual or counterproductive. That may help explain why sub-optimal institutional status quos endure (Bieber 2018). Even as new (e.g. rent distributing) institutions emerge, path dependent habits may thus inadvertently facilitate counterproductive behaviour, such as rent-seeking (Dodds et al. 2014). Scholars following this approach can thus explain why external efforts to embed particular institutional designs leave unintended consequences (Dodds et al. 2014:442), or leave unrealized particular intended effects (Fagan et al. 2015).

The thesis also recognizes the usefulness of an approach that accounts for a logic of appropriateness and consequences, as well as path dependence in analysing institutional change processes in quadruple transition contexts in the Western Balkans. The thesis concurs that simple RCI models for expecting institutional change, like that of Sedelmeier and Schimmelfennig (2005) can fall short in such contexts: in part because the initial conditions are very dissimilar from earlier EU enlargements (Bieber 2018; Börzel 2013:178).<sup>52</sup> I.e. it may be “naïve” to expect that new rules can be implemented regardless of context. If such expectations appear to be policy, which arguably has been the case among liberal state-builders, it may be (more) worthwhile to investigate if and how certain actors redirect the introduced new rules to serve their own ends (Uberti et al. 2014).

The research therefore takes a new institutionalist approach that can account for path dependent factors impacting on institutional change in land governance in quadruple transition contexts. Still, its approach remains rooted in rational choice institutionalism. The reasons are as follows:

First, studies of quadruple transition contexts that rely on narrow RCI approaches may miss key

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<sup>52</sup> Western Balkan states overall also appeared to exhibit less enthusiasm for EU membership compared to earlier Enlargements (Schimmelfennig 2014; Sedelmeier 2014; Vachudova 2014).

variables that drive institutional change. Yet this does not mean that RCI theories can never be useful in explaining change in such fragile contexts (Andrews 2015). To use theories that hypothesize that simple solutions (e.g aligning with international ‘best practice’) can succeed in solving complex institutional problems over the long-run may be worthwhile, if only because such theories evidently continue to influence governments and donors in fragile contexts.<sup>53</sup> The thesis therefore argues that it is appropriate to use such a theory of institutional change (see the SLDC theory below) alongside other theories that make less heroic assumptions.

Second, SCI and HI approaches are arguably at risk of overestimating the role of structural constraints (Lara 2015:577), or even underestimating the change enabling aspects of ‘deep structures’. The recent focus of scholars taking HI approaches on negative unintended consequences and unrealized effects overlooks the possibility that certain constraints, such as the presence of veto players, may drive, rather than constrain institutional change. This warrants using theories of change which account for learning and adaptation; that take a long-term view; and pay attention to specific (problematic) rules (see the PDIA and LAOC theories below).

Third, this research is not seeking to understand how reform processes shape “fundamental actor identities”. For that an SCI approach may be more appropriate (Checkel 1999). Instead it is trying to discover what incentivizes or drives changes in governing access to land. This is not to say that socially constructed identities cannot be conceived as potential external variables influencing these incentives. RCI analytical frameworks may recognize that “principled and causal beliefs can...affect cost-benefit calculations, and influence the strategic interactions themselves” (Risse 2000:4). RCI does not necessarily mean one has to assume actors drive social change by behaving like utility maximizing automatons. Individuals can be guided by norms, habits and beliefs that evolve over time in line with evolving preferences (Buchanan 1999:249–50). Further, RCI scholars can relax assumptions about rationality and instead account for “bounded rationality”, where actors

“seek goals but do so under constraints of limited cognitive and information-processing capability, incomplete

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<sup>53</sup> See Andrews (2012); Andrews, Pritchett, and Woolcock (2013), or the perceived importance of the doing business index indicators for property registration mentioned in the introduction.



information, and the subtle influence of cultural predispositions and beliefs” ([Ostrom 1972] McGinnis 2002:59–60).

This assumption provides a basis for understanding why in some cases individuals or composite actors (groups of individuals), can be prone to cause unintended consequences. Yet actors can still be expected to learn about “the relationship between particular rules and the social consequences that those rules tend to evoke”. Moreover, one can yet assume that rules

...can be created as a matter of *conscious design*. If conditions were to change and a particular set of rules failed to evoke an appropriate set of responses, rules could then be altered to evoke appropriate responses.” (idem).

Therefore, the thesis argues that this alternative notion of rationality can accommodate potential disagreements between RCI scholars over whether institutions arise unintentionally or by design. It may be especially suitable to study quadruple transition contexts and the web of actors that may be involved in changing economic institutions.

The thesis argues that the problems of narrow RCI approaches in explaining change in fragile contexts, especially where actors face uncertainty and challenges in governing access to natural resources like land, can be addressed by taking the RCI approach of Elinor Ostrom.

Similar to HI, Ostrom critiques narrow conceptions of rational agency as inappropriate to explain complex situations, especially collective action problems involving natural resources. This type of problem is seen to occur when actors are confronted with a choice to maximize short-term individual gains vis-à-vis a particular resource, or not. Garrett Hardin, who famously considered a collective action problem involving herders that he presumed were blinded by self-interest and thus inadvertently overgrazed their commons, was, according to Ostrom, doubly wrong. Firstly because he wrongly assumed that herders would always end up overgrazing their lands unless an external force would impose property rights or regulations to constrain them. Empirically, Ostrom found herders *had* established and maintained self-organized arrangements that allowed commons to endure. Second, this demonstrated Hardin’s presumption about herders as systematic short-term utility maximizers was off. Herders, have bounded capacities to take rational action, but they can learn and

act collectively to address (potentially) negative outcomes (like overgrazing) (Ostrom 1990:3–28).

Moreover, Ostrom critiqued and dealt with problems facing new institutionalism generally when it came to providing micro-institutional detail on resource governance. She stated that the type of rule that seems broken or missing in a situation with collective action problem needs to be accounted for (Ostrom 1990:22,30). However, new institutionalist approaches typically do not. Simply stating (in Hardin's case) that the lack of regulation or property rights is the problem says little about what exactly needs fixing. Moreover, the characteristics of the community of herders or the environment – i.e. the biophysical attributes of the commons – are left out of the equation. Besides institutional rules, such variables could potentially inhibit or enable certain individual or collective behaviours related to the resource. Ostrom (with many collaborators (Lara 2015)) thus built a framework that could detail the types of rules in unregulated and regulated access situations; and that could account for contextual variables, besides institutions, that may co-determine those rules, and thus the incentives shaping boundedly rational action vis-à-vis a natural resource.

## **The analytical framework**

Ostrom's framework, known as the Institutional Analysis and Development framework (IAD), seeks to address the shortcomings of narrow RCI and new institutionalism mentioned above.

Using it allows the research to detail change processes at the micro-institutional level, with different rule types in the dependent variable and three types of contextual variables (here called external variables). Further, it can integrate other analytical concepts central to this thesis, including “rent-seeking” (Ostrom 2005:271) and the access order terminology developed by North, Wallis and Weingast (2009). This allows the research to identify and denote the basic incentive structures and macro-level outcomes throughout the rest of the thesis. Finally, while the IAD lacks theory about what exactly triggers actors to learn about and change structural outcomes, it can act as platform for rational choice based theories that are relevant to the specific change processes (Poteete, Janssen, and Ostrom 2010:50) that this research observed.

This framework's core concepts of land rents, land rights, rent-seeking and economic access orders are first introduced to indicate the basic incentive structures that exist in land governance situations, and which may influence actors, both at a micro- and macro-level, to drive land governance change in quadruple transition contexts. This will be followed by a discussion of the situational rules that may create those incentive structures, and the three theories of land governance change.

### *Land rents, rights and rent-seeking in two access orders*

Rents can act as powerful incentives on rational actors in the IAD, just as in any an RCI perspective. They can be created 'naturally' through market mechanisms, and are then profits that actors earn.<sup>54</sup> Authorities can also create rents: they can do so 'artificially' by setting rules for accessing a good or resource. If those rules are enforced, authorities can force actors to spend a fee (and/or time) to secure this artificial rent. Property rights are such rules. Paying for a property right (e.g. to have it registered) subtracts from profits. However, this artificial rent may also create opportunities. For instance, a registered property right may create certainty about who owns the land, and allow the owner of the deed to collateralize it (De Soto 2000:220).

Property rights in land governance may be called land rights. Ostrom and Hess usefully subdivide property rights vis-à-vis a natural resource like land in five types: entry<sup>55</sup>, possession, management, exclusion and alienation rights. Alienation rights effectively join the other four types rights together and may involve rights to ownership (see table 1). The advantage of this typology is that it describes the types of actions that these rights formally allow vis-à-vis land rents, both natural and artificial.

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<sup>54</sup> In economics, rents are derived by subtracting from the obtained yield (or income) the costs of putting a certain factor into production (Buchanan 1999:103).

<sup>55</sup> Called "access" rights by Ostrom and Hess (2007).

Table 1. Property rights in land governance, or land rights<sup>56</sup> (Adapted from Ostrom and Hess (2007:11,16,116).

Type of right	The right-holder may formally...
1. <b>Entry</b>	... enter a defined parcel of land and enjoy “non-subtractive benefits” (e.g. clean air in a park), like a tourist.
2. <b>Possession</b> <sup>57</sup> (bundling 1+2)	...possess objects from the parcel for private ends (e.g. inhabit an apartment, tap water; chop wood), like an apartment dweller.
3. <b>Management</b> (bundling 1+2+3)	...adjust “use patterns” on the parcel and construct specified objects (e.g. a building, fence or a ski resort), like an SOE. <sup>58</sup>
4. <b>Exclusion</b> (bundling 1+2+3+4)	...decide who has entry and possession rights, and stipulate (some of the) conditions for transfer of those rights, like an SOE.
5. <b>Alienation</b> (ownership) (bundling 1+2+3+4+5)	...transfer exclusion & management rights, such as through collectivization, privatization, sale or lease, like a land owner. <sup>59</sup>

This categorisation may help identify key actors in land governance and assist in avoiding presumptions about the type of actions that individual, corporate, or government actors can take (McGinnis 2011a:15). It is especially useful in post-Yugoslav contexts where land rights may be held by public, private, or socially-owned entities (SOE)(see chapter 2).

Since land rights may create and regulate access to land rents, authorities that regulate them may hold a powerful tool. Poorly accountable authorities may be able to abuse it to privilege cronies with special access to land rents. In other words, with the power to create and regulate land rights comes the possibility of rent-seeking.

Rent-seeking involves groups or individuals seeking to secure privileged access to natural and artificial (land) rents through manipulation of the institutional rules that regulate them. The intent is to skew the economic playing field (Buchanan 1999:104,107-8).

<sup>56</sup> When the case studies refer to property rights, it refers to real property rights, unless stated otherwise.

<sup>57</sup> Countries like Bosnia inherited user, possession and occupancy rights (Buyse 2008:297): for the purposes of this thesis, such property rights are all assumed to be possession rights.

<sup>58</sup> Socially-owned entities (SOEs) in the former Yugoslavia were given management rights and/or exclusion rights: see chapter 2.

<sup>59</sup> If alienation rights are held by a private actor it can be described as private property; if by the state, it can be said to be state property.

Rent-seeking often is said to result from situations where agents, like elected officials, can take advantage of principals (like the electorate) who lack means to check their behaviour (Laffont and Martimort 2002; Ostrom 2005:51). Yet it may have different causes. To identify these a further taxonomy of rule types that exist in the situation is helpful. This taxonomy is discussed further below.

It is first important to highlight that the practice of rent-seeking may be small or structural, temporary or enduring. If rent-seeking succeeds and spreads, access to land rents is constrained, which in turn may structurally limit economic opportunities for non-privileged groups (Buchanan, Tollison, and Tullock 1980).

Here the concepts of open and limited access orders, developed by North, Wallis and Weingast (2007, 2009, 2011) are useful to describe emerging macro-level outcomes, or forms of economic governance. They account for the role governing elites play in creating and maintaining institutions that regulate access to land, and other sources of rent creation, both natural and artificial. Both orders share a basic aim: dissuading actors to use violence to overthrow the access order by providing actors access to natural and artificial rents (North et al. 2011:2,14). However, in one ideal type, the Limited Access Order (LAO), order is maintained by enabling rent-seeking, while in the other, the Open Access Order (OAO), order arises by curtailing rent-seeking.

The logic of maintaining a LAO is thus about strategically limiting access to rents. A “dominant coalition” sustains it by strategically manipulating institutional rules to arrange privileged access to the sources of natural and artificial rent-creation, and by limiting or co-opting (potential) economic and political competition. A dominant coalition is a collection of actors that support the arrangement of privileged access via personalized links. It may thus include friends and (rival) factions, relatives and cronies: in short, insiders, who without being included might otherwise try to (violently) overthrow the LAO (North et al. 2009:39,141). The state and institutions that regulate “government contracts”, and “land rents” are therefore tools for the coalition to preserve the regime (North et al. 2011:2). Land rights are particularly useful if other means of production besides land are scarce (North et al.

2009:77). As land becomes more valuable its potential as a source of land rent creation increases. For land rights may make land more legally secure and exchangeable, and (thus) mortgageable (North et al. 2009:30). Yet this does not mean a dominant coalition strives to extend land rights through land governance reform whenever possible. A LAO may keep some land rights opaque, insecure, or in a state of unregulated access. Elites may allow changes in some areas of land governance, but not others.<sup>60</sup> For extending land rights might also mean creating sources of rent creation that are impersonal and independent from the dominant coalition's control (North et al. 2009:77). That also means creating potential political and economic competition.

This is exactly what keeps in place the polar opposite of the LAO: an OAO. In an OAO, governing elites maintain economic order via “impersonal” links. Institutions like land rights allow one to access rents without having privileged access to governing elites. Checks and balances prevent elites from manipulating rent-regulating institutions to favour economic interests of key supporters (North et al. 2009:22). Land rights are thus not granted based on personal connections but rather allocated by impersonal bureaucracies, and enforced and adjudicated by independent courts and law enforcers. Governing elites face democratic political competition and accountability mechanisms, limiting their scope to allocate artificial rents to consolidate their elected positions. In this context, land rights can thus become a basis for greater economic exchange and competition existing independently of political connections. This result may allow for constant redistribution of the sources of rent-creation, thus complicating rent-seeking efforts even more (North et al. 2009:25). Moreover, non-privileged economic and political actors will have vested interests to “countervail” each other's efforts to rent-seek and thus (inadvertently) assist in keeping an economic and political “level playing field” (North et al. 2009:24,124). In short, by enabling institutions that open access to sources of rent-creation regardless of their connections to governing elites, a web of economic and political actors will face incentives to curtail rent-seeking and thus maintain an OAO.

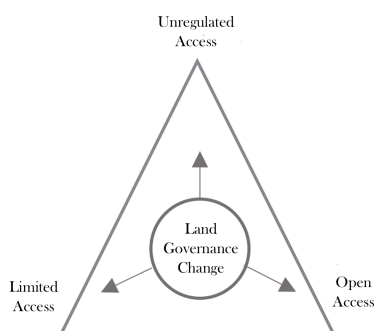
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<sup>60</sup> E.g. de Soto's research (2000) showed that societies dominated by self-serving elites selectively clarify land (ownership) titles (via land registration reform), with the net result that their supporters benefit, not slum dwellers. Thus, land use governance also remains weak. Payne noted that if land rights are kept vague, slum-dwellers may be *more* dependent on the good graces of elites (1989).

The OAO therefore tends toward impersonalizing economic governance and opening access to land rents to a range of actors. By contrast, the LAO tends to be dominated by one<sup>61</sup> or potentially several coalition(s), each limiting access to rents within a particular geography, like a municipality, canton or entity where its jurisdiction is not challenged.<sup>62</sup>

North et.al. do not assume that adopting particular institutions and reforms, like democratic constitutions will naturally result in transition to an open access order. Nor do they assume certain actors have any natural preference for one access order or the other (2009:270). This requires consideration of context (2009:257). However, they do suggest that land rights tend to be created in transitions: in “transition, elites [may] find it in their interests to protect their privileges by converting them into rights” (2009:190). North et.al. also recognize that in a LAO in transition, initial interest in consolidating privileges may (inadvertently) remove land from the direct control of the dominant coalition and thereby make land access “truly impersonal” and open (idem, 2009, 78). Land governance change in quadruple transition may thus cause shifts in a direction of an OAO or a LAO; but logically also unregulated land access remains a possibility. These three potential macro-level outcomes are depicted in figure 1. This can be useful in describing the possible answers to the third sub-research question (iii) and discussing the theories of land governance change (below). It will first be discussed how these macro-outcomes might relate to specific situational changes.

Figure 1: Three macro-outcomes of land governance change (author).

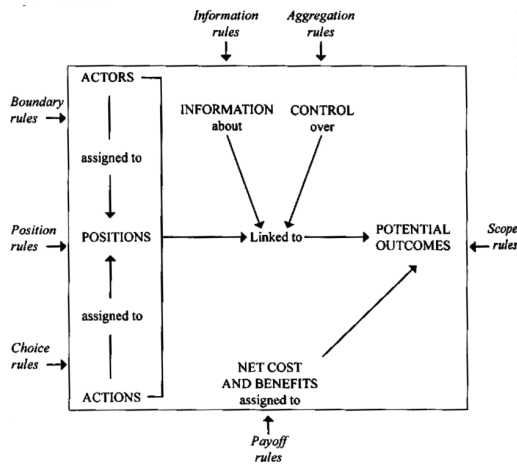


<sup>61</sup> In such as case (North et.al give the Soviet Union as an example) one party controls most economic organizations and other means of production that are “linked to the central state”. It also monopolizes violent means, further allowing it to suppress efforts to overthrow this order (North et al. 2011:9).

<sup>62</sup> In such cases (foreign) private sector actors may operate. Yet “political connections” remain a prerequisite for large profits. Thus, dominant coalitions remain in control over rents within their jurisdictions. Neither the democratic process (if in place) nor independent capacity to engage in violence is likely capable of challenging governing elites’ (local) holds on the sources of rent creation and distribution (North et al. 2011:9).

## The dependent variable

Figure 2: The action situation (adapted from Ostrom 2005:189).



The dependent variable of the IAD framework is the action situation (henceforth situation). It is where actors<sup>63</sup> observe, interact, and attempt to drive processes toward certain outcomes (McGinnis 2011a:173). These outcomes may emerge through cooperation (to exchange or reform) or conflict (to subjugate or exclude) (Ostrom and Ostrom 2004:68).

As figure 2 shows, situations are structured by different rules that jointly shape incentives. Paying attention to these rules and how they impact at a micro-level helps ascertain how practices like rent-seeking; are caused; how outcomes like unregulated access arise; or why certain collective change processes, like institutional reform, emerge. The thesis can detail what situational rules exactly skew or level an economic playing field, and thus help a LAO or OAO consolidate. The broader point of paying attention to the “microinstitutional” is thus to link micro-level outcomes with broader macro-level ones (Kiser and Ostrom 2000:60;[1982]; cf.Smith and Swain 1998:25). In short, it helps answer the thesis’ sub-research questions.

There are seven types of rules (see figure 2) that structure incentives and actor behaviour in a given situation involving a natural resource like land. *Position rules* (1) *position* actors **with** differential *preferences, resources, responsibilities* and thus *opportunities* vis-à-vis the resource (McGinnis 2011a:173). As figure 2 shows, positions are also influenced by boundary rules<sup>64</sup> and authority rules.

<sup>63</sup> Like in RCI generally, actors may be individuals or groups (Ostrom 2005:39): like a government, NGO, international organization or a coalition.

<sup>64</sup> Denoted as “choice rules” in figure 2.



**Boundary rules (2) include or exclude actors** and thus determine who can influence the resource, or land within a certain jurisdiction or geography. These rules stipulate who can de-facto physically access and take decisions vis-a-vis the resource and its rents, and who cannot. Strictly enforced spatial plans that allocate land rights bar squatters, for example. Boundary rules thus restrict the number of actors that can take decisions vis-à-vis a resource. They thus also determine whether new actors, like oppositional figures, activists or the EUSR, can (effectively) be included in processes that decide over land and land governance (change). **Authority rules (3) authorize.** E.g. they restrict the choices that are formally allowed vis-à-vis the resource. For instance, they determine who can be authorized to inspect compliance with land use rules or adjudicate land disputes, but also discretionary authority.

Jointly these first three rules thus allow identification of actors that could, by nature of their position and independent of others, powerfully influence the resource, change it and/or enable rent-seeking.

However, actions resulting from positions are influenced by four other rules. **Control rules<sup>65</sup> (4) determine the countervailing power, control and accountability mechanisms** affecting the resource: i.e. the rules that determine the degree of control over the actions of others vis-à-vis the resource, and their potential outcomes. E.g. land alienation may not be up to authorized decision-makers, but controlled by other rules that create checks and balances: including rules that give some decision-makers veto-power; that allow voters to elect and reject them; or that create opportunities for activists that can monitor and apply countervailing pressure on those formal decision-makers. **Scope rules (5) determine possible outcomes and risk** vis-à-vis the resource. E.g. all else equal, alienating state-owned land via a public-private partnership lease would be legally impossible if laws only allow for its privatization, or de-facto impossible if the land is already squatted. The risk of rent-seeking and illegal construction may be enhanced in absence of sufficient control rules. This also holds for **Information rules (6).** These **determine available information** and **(un)certainty** that actors have about their own positions and possible choices, those of others, as well as possible outcomes that could affect the resource. Actors always lack information (given that they are boundedly rational), but information

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<sup>65</sup> Denoted as “aggregation rules” in figure 2.

rules can moderate it. Uncertainty about the resource thus varies across contexts (Ostrom 2005:49,51-2). E.g. if public land records can (or cannot) accurately identify a person as owner over a given parcel, that may inform that person's options: e.g. whether the parcel can be mortgaged or legally inherited, or neither. If land right enforcement mechanisms are commonly known to be dysfunctional (or functional), uncertainty about how vulnerable the parcel is to squatting may increase (or decrease).

***Payoff rules (7) determine*** cost-benefit calculus: ***how actors weigh the costs and benefits*** of different actions vis-à-vis the resource or rent. This weighing may be determined by how rules are intrinsically valued (e.g. in terms of a sense of security obtained from having land rights officially recorded on a land title); how acquiescing with rules is priced in material/financial terms (e.g. the cost of formally obtaining a land title extract) and how certain rents are biophysically realised (e.g. whether a land title extract is digitally and/or physically produced (McGinnis 2011b:173-74; Ostrom 2005:42-43; Ostrom, Cox, and Schlager 2014:272).

This typology allows one to see how different rules may create different situations of land governance: i.e. how rules may be interlinked and jointly create the structural incentives for certain behaviours like rent-seeking. E.g. if land registry officials are ignorant about the actual owners of parcels on the periphery of a city, and if that is common knowledge (information rules) it may structurally create opportunities (position rules) for encroachment. We can determine that there are broken information rules. Or if scope rules change (e.g. spatial plans that permit land use) so that a large construction project is now allowed to use forested land, without a process of verifying compliance with environmental regulations, we can state that there are broken control rules and risks of rent-seeking. Since control rules are broken, those with the authority to alienate that land may be disincentivized to account for possible environmental costs and incentivized to account for the political benefits of granting the land to political supporters (payoff rules) (Ostrom 2005:277-78).

Yet one can also see why situational rules may constrain rent-seeking opportunities. For instance, if land records are accurate and easily accessible, then land rights may be both enforced and respected. If land alienation processes can be made transparent (information rules) then the

opportunities (position rules) for rent-seeking behaviour may be reduced.<sup>66</sup> Alternatively, actors may have the resources to structurally take (formal or informal) “countervailing” actions against efforts to grant privileged access to natural or artificial rents (control rules) (Ostrom 2005:281–88;cf.North et al. 2009:142).

In the case studies the thesis will refer to the action verbs expressed above in ***bold cursive*** letters to refer back to the situational rules. This is for the sake of readability and keeping a sense of narrative (constantly referencing to the rule types (e.g. via brackets) would be a less attractive alternative). The conclusions will explicitly refer back to the rule types where this helps clarify a particular finding or argument.

### *Status quo outcomes and external variables*

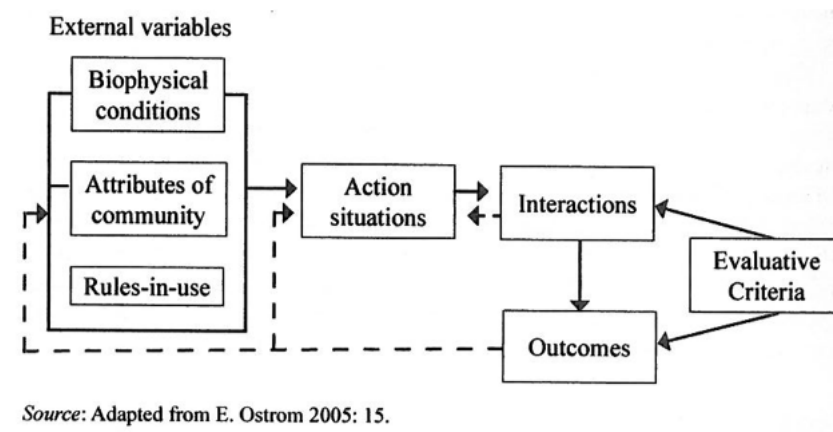


Figure 3: The essence of the IAD (adapted from Ostrom 2005:15).

Each of the above-mentioned seven situational rules that constitute the dependent variable are influenceable by institutional rules, and the biophysical and community attributes of the given context. In the IAD these are external variables which may maintain and alter status quo outcomes.

A “status quo” exists in a given situation if, after repeated interactions, neither its rules nor actors’ choice sets change (Ostrom 2005:44). Yet, as noted, Ostrom’s RCI approach assumes actors are

<sup>66</sup> Information regarding the state and usage of the resource may not just make e.g. land use more transparent, it may also decrease the room for insider networks to allocate rents from land opaquely (Ostrom 2005:67, 282). This links with e.g. the theory of De Soto (2000) (see introduction) who adds that functional, public available and impartial land registration may lower the cost of accessing artificial rents, and lower the barriers to access land and mortgage markets. I.e. it may open opportunities to invest in land without political interference.

boundedly rational. That means we can expect them to act in self-interested *and* in other-regarding ways (Conaway 2009). This is because we can assume that actors can learn from repeated outcomes. They may identify rules that repeatedly create those outcomes, and if they dislike them, they may adapt accordingly. That may shift their focus toward (collectively) influencing external variables that repeatedly co-constitute the rules of disliked situations, and thus make different outcomes possible.

Figure 3 shows this with the dotted arrows: outcomes of situations could re-constitute the rules of a situation as well as external variables. External variables can also be changed by the outcomes of “adjacent” situations (Keohane and Ostrom 1994:41–42); these outcomes are here assumed to be outside “events” (Kiser and Ostrom 2000:60;[1982])<sup>67</sup>.

This assumption helps limit the scope of this analytical framework. For the legacies of conflict and collectivism in Yugoslavia, and liberal state-building agendas in post-war Bosnia and Kosovo can be treated as ongoing events that may enduringly have affected the context, i.e. the external variables that shaped the situational rules in the observed cases of land governance change (what this may entail is discussed further in chapter 2). This same assumption applies to other events that emerged during quadruple transition, but which are clearly not particular to these case studies.<sup>68</sup>

The external variables are the institutional rules-in-use, community attributes and biophysical conditions.

Institutional rules-in-use reflect the degree of disconnect between written rules and those operating in practice. If written rules do not directly regulate the patterns and outcomes of social, political and economic interactions, they can be said to be not ‘in-use’ (Ostrom 2005:17–20). Dimitrova adds to this by describing the processes whereby a formal rule becomes a rule-in-use, a process she calls “institutionalization”. If actors create formal rules without providing necessary supporting rules or relevant capability to make these rules-in-use, this is called “window-dressing”. If a written rule is

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<sup>67</sup> For the sake of reducing the complexity of the IAD, the different “levels of choice” and types of “adjacent” action situations are excluded from the analytical framework (Ostrom 1999:60).

<sup>68</sup> Such ‘generic’ events may be the emergence of new EU legislation that all accession countries eventually need to implement, or global crises (such as the global financial crisis of 2008).

increasingly ignored, it may become an “empty shell” (Dimitrova 2010:138,146). These processes are depicted in figure 4 below.

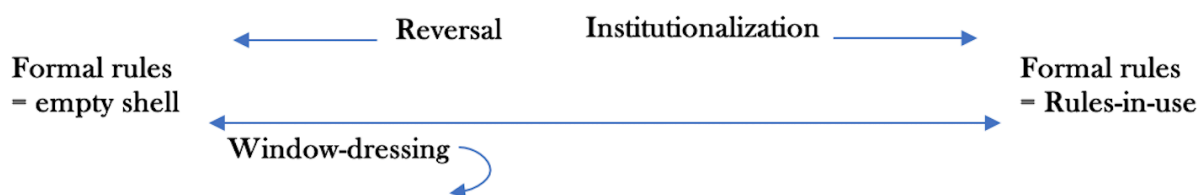


Figure 4: Institutionalization, window dressing and reversal (adapted from Dimitrova 2010).

The above is useful to identify possible interconnections between different land governance change processes. E.g. the existence of a land registration system that accurately provides information about land titles (e.g. who owns land) may facilitate institutionalizing new land use regulations (how land can be used). By contrast, if land use rules are progressively ignored by squatters, land titles may likely also become an “empty shell”.

Community attributes, the second external variable, includes the degree of understanding actors share about the rules governing the situation; the shared values and preferences; as well as the size, make-up and income distribution of the community of actors (Ostrom 2005:26–27). Community attributes allow one to account for attributes like “ethnic background” that structurally ostracize or privilege certain groups or individuals in accessing rents in certain situations. Ostrom gives the example that this may explain why actors “in a community that has recently faced racial or ethnic conflict...may hesitate a long time before extending trust and reciprocity to each other if facing an opportunity to enter a long-term contract” (Ostrom 2005, 40). Accounting for “community attributes” thus seems relevant in explaining land governance change in certain post-war communities in Bosnia and Kosovo. This seems especially so in places where the ethnic composition, economic value of land and political claims may have changed, and thus also potentially altered local preferences for institutional change (see e.g. Tuathail and Dahlman, 2006; Bilefsky, 2007; and chapter 2).

Biophysical conditions, the final external variable, relates to the attributes of the material world that can be “acted upon or transformed”. This variable physically determines the choices available. This includes an actor’s physical presence and resources (position rules); whether a land right is digitally and/or manually recorded (payoff rules); and which number of actors can physically reach and affect certain situations (boundary rules). Biophysical conditions thus dictate how resource rents, “are biophysically produced, consumed and allocated” in a situation (Ostrom 2005, 22). It also determines the degree to which the resource itself is (physically) subtractable (i.e. the degree to which individual usage of the resource limits future usage by others) and the degree to which it is (physically) excludable (i.e. how difficult it is for actors to restrict access to it). Land, or parcels of land, can be vulnerable to the problems of unregulated access if it is both difficult to exclude and easy to subtract. In the introduction we saw such an example in Pristina in June 1999: squatting and illegal construction became so widespread that evidently institutional rules were no longer in use and community attributes lacked sway. In that context Pristina’s land parcels, like water in a mountain stream, seemed de-facto difficult to exclude others from, but easy to subtract from the overall pool of available land (i.e. it was a common pool resource). Conversely, if land rights were subsequently enforced, land would become more physically excludable and less subtractable. As a result of real-world outcomes, like collective efforts to drive institutional change, a resource like a land parcel (and its rents) may thus be turned (de-facto) into a private, public or toll good.<sup>69</sup>

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<sup>69</sup> Private goods are easy to exclude others from and one person’s benefit prevents usage by others (like a cup of water); public goods are hard to exclude others from, while one person’s benefit does not prevent usage by others (like clear air); club goods are easy to exclude others from, while one person’s benefit does not exclude others’ benefit (like library books or land (registry) records) (Ostrom 2005:23–24).

	Hardly subtractable	Significantly subtractable
Significantly excludable	Club good	Private good
Hardly excludable	Public good	Common-pool resource

Figure 5: Land governance change at the micro-level (adapted from Ostrom 2005:24).

As resource governance change takes place, it may thus alter the rules governing the resource and de-facto change its ‘nature’. This possibility, that for example a commonly-used parcel de-facto becomes a private good if it is squatted, and formally if it is legalized, is indicated in figure 5. However, if many such micro-level land governance changes occur, it may impact the macro-level as well. Thus lower-level outcomes may conceivably influence the consolidation of a new form of economic governance: i.e. an OAO and LAO, or state of unregulated land access (figure 1). However, how this occurs exactly must involve investigating changes in the biophysical conditions *and* the community attributes *and* the institutional rules-in-use. Even if one is concentrated on institutional change, Ostrom cautions to not overlook the influence of the other two external variables. These *jointly* shape the situational rules and outcomes (Ostrom and Ostrom 2004:81).

## *Justifying the analytical framework*

The advantages of this analytical framework are several. First, Ostrom's RCI approach allows the thesis to argue that even in the absence of centrally enforced rules, post-conflict communities can organize, collaborate and overcome collective action problems. With the assumption of bounded rationality it is possible to see how actors in land governance may come to recognize problems with the incentives that they repeatedly face, and how, over time, they may identify specific courses of collective action to alter institutional rules that affect them.

Second, deploying the IAD allows the thesis to integrate additional analytical concepts (Sabatier and Weible 2014:275–76), including rents, land rights and access orders that fit well with the RCI approach and help describe and understand micro- and macro-level outcomes. In particular, it allows the thesis to argue that rents created by, or accessed via land governance institutions can act as powerful incentives on actors. Further, it can argue that rent-seeking might be a key factor in explaining post-conflict processes of land governance change, and transformations out of situations of unregulated access toward limited or open access orders.

Third, the complexity of land governance change can be accounted for in ways that HI cannot. By assuming the action situation as the dependent variable, one can identify the specific situational rules that entrench outcomes like unregulated land access or rent-seeking. Moreover, one can appreciate how (new) institutional rules-in-use, alongside biophysical and community attributes, may embed a status quo, or transform it. Additionally, the IAD is appropriate for detailing change processes vis-à-vis a natural resources (Cairney and Heikkila 2014:139–42; Sabatier and Weible 2014:297) that take place over long periods of time (Ostrom 1990:139–42). It thus also (like HI) matches well with the process tracing method.

Finally, this analytical framework can act as platform for various RCI-based theories each with different assumptions about the preconditions for change (structure) and the types of actors involved (agency) in the observed contexts. For it does not provide a specific explanatory theory of its own (Ostrom 1990:141). Each theory used here explains the observed changes in land registration, use



and alienation governance differently, and therefore answers the sub-research questions differently. Using these theories of land governance change may thus help link back to uncover the scholarly discussion mentioned in the introduction about the purported limits and possibilities of institutional change in economic governance during quadruple transition.

In short, by paying attention to different rule types and external variables, as well as micro- and macro-level outcomes and multiple theories of collective action, one can identify “universal elements” (Ostrom and Ostrom, 2004:66) about changing land governance in quadruple transition in Bosnia and Kosovo.

That said, this analytical framework has multiple possible shortcomings.

First, the access order typology may be too sparse and simplifying to describe the form of economic governance that may emerge from resource governance change processes (Gray 2016:71). Certainly, a greater variety of “capitalisms” and macro-level outcomes may be envisaged besides the LAO or OAO.<sup>70</sup> Nevertheless, the thesis finds this typology justifiable. As ideal types, they help assess to what extent societies approximate these forms of economic governance (North et al. 2009:271). It helps setting the stage for the case studies: it can be argued that the former Yugoslavia resembled a LAO (as it formally designed economic institutions, including land rights to limit economic and democratic competition); that unregulated access existed in various areas of land governance following conflict; and that the OAO, was held up as the ideal of the liberal peace and EU integration agendas in Bosnia and Kosovo<sup>71</sup> (further support for these claims are provided in the next chapter). This helps assess whether, by 2015, changes in land governance in post-conflict Bosnia and Kosovo had shifted economic governance to a kind of LAO or OAO.

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<sup>70</sup> The Varieties of Capitalism literature provides more detailed and regional typologies (Danielsson 2014; Tsenkova 2009:108). North et.al distinguish between a fragile, basic and mature LAOs (North et al. 2009:41-9); see footnotes above on page 59.

<sup>71</sup> Few have deemed that the agenda for liberal and EU member state-building is essentially about constructing an OAO that enables “impersonal exchange” (Capussela, 2015:26–29). Many instead have stated it resembles a “neoliberal” one (Bohle 2006; Juncos 2012:70). In liberal peace building Roland Paris, for example, compared that agenda with “neoliberalism” (Paris 2004:96). However, this thesis is persuaded by Venugopal (2015) and Pinson and Morel Journal (2016) that the term neoliberalism is problematic: inter alia because it is used in contradictory ways that make it confusing and less valuable as an analytical term, including in land governance. The thesis thus prefers the OAO as a concept.

Second, it is not easy to ascertain where learning and collective action begin in the IAD, especially if the research has a broader macro-focus and is reliant on interviews. Most interviews that this research conducted were with actors seeking to influence macro-level outcomes (policies, laws etc), and rarely with micro-level actors (companies, enforcers, squatters etc.). There was thus an increased risk that in collecting data, the research became biased towards narratives that suggested learning and collective action in the observed cases began at the top. Triangulating evidence (i.e. by casting an as wide empirical net as is feasible) may have reduced this problem. Still, given limited research time and resources, “judgement calls” unavoidably needed to be made (Ostrom et al. 2014:297).<sup>72</sup>

With the IAD judgement calls also may need to be made in deciding whether institutionalization or reversal is taking place. Ostrom recommends triangulation to figure out which rules exist formally (arising from legislative or administrative decisions) and which are becoming rules in actual use (Ostrom 2005:20). Again, this can be challenging given research time and resource constraints.

Fourth, gauging the impact of external events on the observed situations is problematic. For instance, while an external event like war may clearly affect the institutional rules-in-use or biophysical aspects that shape a given situation, its impact on community attributes, may not always be visible in “field settings” (Ostrom et al. 2014:297). Once more, triangulation may help, but it is not a panacea.

Finally, the IAD lacks assumptions about the type of agents involved, and what exactly triggers agents to learn about structural outcomes (McGinnis and Ostrom 2012). This is in contrast to other analytical frameworks which identify particular actors and/or events that bring focus on particular problems.<sup>73</sup> Thus the IAD needs theories to identify such specifics to explain change processes. Below three such theories are discussed that are relevant to the observed case studies.

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<sup>72</sup> See introduction (38).

<sup>73</sup> E.g. Multiple Stream Analysis (Zahariadis 2014). The Advocacy Coalition Framework (Jenkins-Smith et al. 2014) recognizes the role of “shocks and changes in governing coalitions” (Cairney and Heikkila 2014:367).

## Three theories of land governance change

The three theories are RCI-based, as mentioned. I.e. they have in common that each assumes the involvement of rational actors that are intent on institutionalizing (or reversing) a given situational rule, or set of rules governing land rents. Yet each makes different assumptions about the types of actors and structure (conditions for change) involved. Each thus hypothesizes differently about what and who, drives land governance change, how these processes come about, and what access order emerges as a result.

### *The theory of Limited Access Order Consolidation (LAOC)*

LAOC theory expects land governance change to occur if this is consistent with the interests of a dominant coalition. LAOC suggests a “dominant coalition” can avoid inadvertently creating bases for political and economic competition by expanding land rents (see above). Before driving change, it ensures three doorstep conditions are in place. Firstly, the dominant coalition must be able to count on a “rule of law for elites” (2009:151). I.e. its members must be able to trust that law-enforcers and bureaucracies regulate access to land rents relatively impartially as far as their interests are concerned. If an intra-elite dispute emerges, e.g. over recent changes in land governance, courts must be able to adjudicate relatively impartially. Secondly, private and public actors that depend on contracts must be able to trust that certain key state institutions, such as the boundaries of a (Yugoslav) “successor” state, will last in the foreseeable future. If not, those actors cannot depend on agreements that transact land rents; nor can governing elites safely commit to reforms (North et al. 2011:15-6, 2009:152). Finally, the dominant coalition must control the means of organized violence to ensure its LAO is not violently challenged (2009:151-155).<sup>74</sup>

Once started, change processes “must” remain consistent with the interest of the dominant coalitions: i.e. change must be “incremental” and “sustained by the existing political and economic

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<sup>74</sup> Donors and peacekeeping missions may provide the support to dominant elites, e.g. through peacekeeping or financial assistance, to help a dominant coalition meet these doorstep conditions if they are unable to do so themselves (North et al. 2011:14-6).

systems along the way” (North et al. 2009:25,149-150). This also means that new technologies, transnational capital and donors may be endorsed by the dominant coalition if these appear to have “the immediate effect of helping elites increase their rents, with later and secondary effects of improving the lives in the wider circles of society” (North et al. 2011:16). Thus, a process of institutional change that opens access and creates impersonal exchange can begin to emerge, but only if its advantages appear to mainly accrue to the dominant elites.

Outcomes of particular land governance change must therefore consolidate a LAO. Even if there is more impersonal and open access to certain land rents, this should only ostensibly shift economic governance towards an OAO. Only the dominant coalition and those politically connected with it are positioned to reap advantages from greater land rent access. Other land governance institutions that they cannot bring to fit with the new situation remain under “limited access arrangements” (North et al. 2011:11). In answer to each research question, the following can thus be hypothesised:

Table 2: Limited Access Order Consolidation (LAOC) theory (adapted from North et al. 2009).

Key question	Hypothesis
<i>i. What drives processes of change in land governance in quadruple transition?</i>	H1. Changes are driven by the logic of consolidating a LAO. Data shows doorstep conditions in place before governing elites drive changes intended to consolidate control over land rents.
<i>ii.a Who leads these processes?</i>	H2. Processes are led by a dominant coalition of governing elites. Data shows governing elites as central and indispensable throughout.
<i>ii.b How are these realized?</i>	H3. Changes are institutionalized incrementally to ensure these align with the dominant coalition’s political and economic interests. Data shows governing elites constantly manipulating intermediate institutional outcomes
<i>iii. What form of economic governance do outcomes of these processes consolidate?</i>	H4. Outcomes of change in land governance consolidate the LAO. Data suggests the rules are changed in a way that consolidates the ability of governing elites to grant access to land rents based on personal and political connections and to skew the economic level playing field.

The theory has the advantage that it reflects what the empirical literature on fragile and quadruple transition contexts also seems to find. Ostrom herself describes comparable contexts where changing

resource governance is decided or “dominated by...a local leader or power elite who only change rules that they think will advantage them still further” (Ostrom 2005:282). The literature on the Yugoslav successor states like Bosnia and Kosovo described how institutional changes may only occur in so far as this aligns with the interests of local “big men” (Kanin 2003:502) or “princes” (Bieber 2015a), who cunningly pay lip-service to liberal state-building agendas (see introduction). Still, the theory has shortcomings.

Firstly, the doorstep conditions limit the possibilities of what drives land governance change processes. Presuming these preconditions must be in place may well result in overestimating the structural difficulty of driving change and reform (Hirschman 1963:252). Secondly, while the theory does state that dominant coalitions may change in composition, it remains vague about what makes them “dominant”. This requires a careful assessment of the total rents that they accrue, which remains an empirically difficult task. Thirdly, the theory presumes coalition members have structurally better heuristics at their disposal to make decisions than potential competitors, and that they have a strong capacity to compute how changes in land governance will affect their goal of consolidating the LAO (they are fully capable of ascertaining the payoff rules). In other words, they are presumed to be extraordinarily rational. For reasons already discussed above, this assumption seems doubtful, especially in quadruple transition contexts.

### *The theory of Solution and Leadership Driven Change (SLDC)*

SLDC<sup>75</sup> is, like LAOC, an elite-focused theory of institutional change relevant in “fragile” transition contexts. What drives change is the solution that exists *before* a reform process starts, and which externally emerges as an external event. I.e. the solution is “fully identified upfront” (Andrews, 2015:199). This solution can be a best practice, standard, or requirement that generally is claimed to be a “right mix of economics, institutions, and politics supporting growth and development” (Brady

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<sup>75</sup> This theory, like PDIA (see below), emerged as a response to “a fragmented set of perspectives” in reform “leadership” theory (Andrews et al. 2010:10; cf. Andrews 2015).

and Spence 2010, 2)<sup>76</sup>. As for *who* drives it, and *how*: central is the notion of the preconceived plan that is implemented to re-structure the institutional rules-in-use by a reform champion (Andrews 2012). Andrews et al. argue this reflects core assumptions of development practitioners and scholars. First, that externally recognized ‘best practices’ can be implemented; and second that this requires a local or external reform “champion” who can “think up, motivate, implement and institutionalize” these ideas throughout the reform process (Andrews et al. 2013). The kind of institution that thus emerges looks like a best practice institution, and thus consolidates a form of economic governance that functions like an OAO. Thus, the following hypotheses can be drawn:

Table 3: Solution- and Leadership Driven Change (SLDC) theory (adapted from Andrews 2015).

Key question	Hypothesis
<i>i. What drives processes of change in land governance in quadruple transition?</i>	H5. Changes are driven by a solution known from the outset. Data shows a standard, best-practice, agenda, conditionality or technology from an external context inspiring the observed change.
<i>ii.a Who leads these processes?</i>	H6. Change processes are led by a reform champion. Data underlines the central and indispensable importance of this leader throughout the institutionalization process.
<i>ii.b How are these processes realized?</i>	H7. Changes occur according to a plan of action. Data shows institutionalization occurs in accordance with this plan.
<i>iii. What form of economic governance do outcomes of these processes consolidate?</i>	H8. Outcomes of change in land governance consolidate OAO. Data suggests the new rules are institutionalized as planned. Opportunities to impersonally access land rents expand and create a more level playing field.

The theory has several advantages. The theory’s focus on change through best practice solutions emerging externally seems particularly relevant in fragile situations (Andrews 2015:201) like those in Bosnia and Kosovo. As noted, external actors there have often defined solutions based on subjective interpretations and norms based on idealized Western European experience (Fagan 2012; Juncos 2012; Manners 2002), in other words, an OAO. Actors like the OHR and ICR were given powers to

<sup>76</sup> Found in Andrews et al. (2013:15).

act as reform champions (as argued by e.g. Ignatieff (2010) and Chandler (1999)). State-building and Europeanisation agendas can still be expected to exert influence, including in land governance (see chapter 2). SLDC also suits views of (acquis) conditionality creating external incentives for domestic elites to drive change toward EU accession (Schimmelfennig & Sedelmeier (2005) as well as “technocratic approaches to state-building” (Berdal and Zaum 2013:6).

The shortcomings of SLDC-theory are comparable to those of LAOC theory. Firstly, it makes problematic presumptions: that best-practice solutions exist; that these can be institutionalized regardless of local context; and that actors have the heuristics available to implement that solution. These are presumptions that Andrews and many others have critiqued for not holding up in practice (Andrews 2012; Hirschman 1992; Ostrom 2009; Rodrik 2008; Easterly 2014).

Secondly, the theory seems best suited to reforms that are adopted and implemented quickly. The theory risks losing explanatory power if a central reform champion exits the stage, or if implementation takes a long time. For if the process of change is drawn-out, it is likely that situations are no longer driven by one champion. Moreover, an actor that appears central and indispensable at one moment (e.g. if the actor occupies several “positions” of authority, like the EUSR), may in the long-run have a role that is very different: e.g. as a “connector” that (temporarily) brings together different coalition members (Andrews et al. 2010:13).

Thirdly, SLDC has no room for incremental adjustment of preconceived plans: be it through processes of consolidating control over economic governance (as in LAOC), or through more open-ended processes of iterative adaptation. Moreover, like LAOC, it underestimates the possibility of unintended outcomes (Fagan et al. 2015), where a reform champion inadvertently consolidates something resembling a LAO, or an OAO (Hirschman 1967:8–31).

## *The theory of Problem-Driven Iterative Adaptation (PDIA)*

PDIA-theory addresses some of the shortcomings of the previous two theories.<sup>77</sup> In brief, it expects that institutional changes emerge from problem recognition and is driven by trial-and-error (Andrews 2015:205). It is an RCI-based theory guided by the assumption of bounded rationality (Andrews 2015:200).

At heart, institutional changes are seen to be “motivated by a problem, not a solution” (idem). Thus the only precondition for starting institutional change is recognition of a specific problem that cannot be politically ignored. The assumption here is that actors need to be able to assess the “factual conditions” in order to politically frame ‘problems’. This may happen through “focussing events” that signal an urgent need for change like a (economic or political) “crisis”, but also through “statistical indicators”<sup>78</sup> (Andrews et al. 2013:11). Recognition may come with technological change, which can become seen as necessary to adapt a governance system<sup>79</sup>. It may also come where changing patterns of land use (increasingly) threaten access to other private, communal or public goods, like water<sup>80</sup>: i.e. collective action problems of unregulated resource access. Yet recognition tends to take place over longer periods of time compared to what technocratic, SLDC-like approaches tend to anticipate (Andrews et al. 2013:14-5).

Once a problem is recognized, actors learn how to adapt and institutionalize new rules-in-use through trial and error and experimentation. This iterative and adaptive process is driven by a coalition of actors, not through a single leader (Andrews 2015:199-200). In coalitions actors can be included that have different functions or roles in supporting the process of iterative adaptation (Andrews et al. 2010), be it as negotiators, connectors, donors, or veto-players.

As neither the logic of the LAO nor the externally-derived “best practice” solution purely drives the process, a “compromise” or “hybrid” outcome results (Andrews 2015:200). It does not consolidate an OAO and LAO. Thus, land governance change leaves a fragile form of economic

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<sup>77</sup> It is explicitly used by Andrews (2015) as a competing theory to SLDC.

<sup>78</sup> E.g. one can think of like the expediency of constructing permitting or property registration (DBI).

<sup>79</sup> Andrews (2015:200) quoting Garud and Karnøe (2003).

<sup>80</sup> Andrews (2015:200-1) quoting (Ostrom 2009).



governance that remains open to further change.

Table 4: Problem-Driven Iterative Adaptation (adapted from Andrews 2015)

Sub-question	Hypothesis
<i>i. What drives processes of change in land governance in quadruple transition?</i>	H9. Changes are driven by recognition of a (collective action) problem in land governance. Data shows (long-term) problem(s) being politically recognized through crisis, statistics, technology, or patterns of land use; and starting a search for new institutional rules-in-use.
<i>ii.a Who leads these processes?</i>	H10. Change processes are led by a broad coalition of actors. Data reveals an evolving set of actors, including (potential) veto players, playing different “functional roles” in the adapting institutions.
<i>ii.b How are these realized?</i>	H11. Changes are institutionalized through adaptation and trial and error, possibly over a long period of time. Data shows new rules are incrementally adapted as actors search context-appropriate solutions.
<i>iii. What form of economic governance do outcomes of these processes consolidate?</i>	H12. The outcome of the process of change in land governance does not consolidate an access order. Data shows institutionalization amid a broader state of flux and a fragile form of economic governance that remains open to further change toward a LAO or OAO.

PDIA has the advantage over LAOC that other than problem recognition, there are no preconditions. What matters first and foremost is that problems are recognized at a local level, and that they are put in use, thus putting “the onus on [the] performance [of], not compliance” with (external) solutions (Andrews et al. 2013:10). The theory also claims to fit well with Hirschman’s and Ostrom’s ideas about how institutional solutions to problems may emerge over time through experimentation and learning (Andrews 2015:200,205). Institutional change does not depend on an elite’s constant calculation of who gains from it. Nor does it depend on identifying preconceived (or externally generated) solutions, nor on reform champions. Rather, the idea of coalitions of different sizes with actors with different functions aligns well with Jacoby’s ideas about “transnational coalitions” of external actors and domestic actors each playing a different role in driving institutional changes (Jacoby 2006). It also fits with the observation that even best-practice proposing IFIs like the World Bank can and do engage in trial-by-error institutional adaptation (Andrews et al. 2013:10,21,23).

Yet PDIA also has shortcomings. First, its central focus on problem recognition as the prerequisite to initiate institutional change processes is problematic. It may be difficult to accurately point out when a problem becomes politically recognized as a “crisis”, or part of a reform agenda, and how this leads to collective action. What situations exactly lead to problem recognition is not explicit and whether there are preconditions for change particular to land governance is not clear. For instance, it may be that identifying problems in land use and alienation governance depends on first institutionalizing land registration reforms that clarify information about land rights.

Secondly, the theory lacks detail about what and how coalition actors may come to agree once a problem-driven iterative reform process has started. Over time, coalition members may well come to disagree over the urgency that a particular problem needs to be addressed, who should be involved, and what specific rule types need to be changed (Hirschman 1963:260–64). Moreover, the theory is not clear about the importance (or unimportance) of hierarchy among actors: e.g. who should identify problems. Additionally, how the specific interests of a wide range of actors are aligned in the iterative and incremental process of reform is left undiscussed.

Finally, it is possible that its hypotheses overlap with LAOC. For instance, H3 and H11 may both prove valid because a governing elite seeks to resolve problems by incrementally adapting and ‘finding and fitting reforms’. Further, the line between calling H2 or H10 may be vague: where to draw the line between a narrow dominant coalition and broad PDIA coalition is not clear. Any unresolved overlaps in confirming PDIA hypotheses would reduce the explanatory power of the theory.

## **Concluding remarks**

This chapter began with defining and justifying its concept of governance and explained its new rational choice institutionalist approach by reviewing the literature. This discussion showed how new institutionalist approaches understand differently the role of structure and agency in driving institutional change in governance in quadruple transition in the Western Balkans. It concluded that Ostrom’s approach and analytical framework, which recognizes a need for a long-term view but

remains rooted in RCI, is most appropriate for explaining collective action problems and processes of change in the governance over a natural resource like land.

The second section detailed the analytical framework and its core concepts of land rents, land rights, rent-seeking and access orders to describe the basic incentive structures that may influence in land governance change. This was followed by explanation of the situational rules, status quos and external variables (the institutional rules-in-use; community attributes; and biophysical conditions) that may (re)shape those incentive structures. The assumptions that actors may learn to adapt to status quos, and that events like legacies and state-building agendas may lock-in, or alter incentives, and thus cause situations of land governance to change, were elaborated. Although its shortcomings were identified, the thesis maintains that the complexity of land governance change in quadruple transition in Bosnia and Kosovo warrants using such an analytical framework.

Finally, the three explanatory theories of land governance change and hypotheses were outlined. Each theory has potential shortcomings. Tracing processes of institutional change over a longer period (the whole post-war period) will allow the research to find out which theory, if any, explains the observed institutional change processes in land governance. However, all three theories leave it undertheorized what particular problems in land governance actors may be responding to, how these problems may be connected, and what specific external factors may possibly drive change in those contexts. The next chapters help uncover this.

## 2

# Problems & Problem-Solving Approaches in Land Governance after Yugoslavia

“the Communist Party...stands above the regulations and behind every one of the state’s acts...[at its top stands a] new class [that] obtains its power...from...collective ownership...administer[ing] and distribut[ing it] in the name of the nation...[T]o compel them to relinquish [it]...would mean [to] deprive [them] of their monopoly over property, ideology, and government.”

Milovan Djilas (1957:45-6)

“What do these ex-communist states have to do in order to become market economies?...I used to say...: privatize, privatize, privatize. But, I was wrong...What does it mean to privatize if you do not have security of property, if you can’t use your property as you want to?”

Milton Friedman (2002)<sup>81</sup>

The primary aim of this chapter is to further justify studying and comparing land governance in post-conflict Bosnia and Kosovo. Secondly it aims to provide further background for the observed case studies mentioned in the introduction. This also serves to describe the historical events that may have had an ongoing impact upon the institutional rules-in-use, biophysical and community attributes that shaped the observed situations of land governance in quadruple transition. It thus addresses the following questions: First, what problems in accessing land rents endured after collectivist rule formerly ended and Yugoslavia dissolved, and possibly continued to affect situations of (changing) land governance? Second, what were the general approaches of leading external actors toward these enduring problems from the moment of peace, and how did these evolve and possibly influence observed land governance change in quadruple transition?

These questions are answered by keeping in mind the former Yugoslav space as a whole, and Bosnia after November 1995 and Kosovo June 1999 in particular. The main actors considered in this

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<sup>81</sup> Found in Gwartney, Lawson, and Clark (2005:xvii-xviii).

chapter are those that best seemed positioned with resources, responsibilities and opportunities to change Bosnian and Kosovar land governance: i.e. domestic governing elites at national, regional and municipal level and leading (i.e. agenda-setting) external actors who had committed to liberal state-building: namely the EU, the IFIs, and the US. What actual influence these domestic actors and liberal state-builders had on the observed processes is discussed in part II and III.

## **Enduring problems**

As the introduction mentioned, Bosnia and Kosovo shared many elements of the system of rights and rules governing land that the SFRY had created. They also both entered a state of flux after Yugoslavia's violent dissolution. Thus the affected populations generally faced great uncertainty about whether land rights were enforced; who had access to land-based resources; and who was authorized or positioned to capitalize on this uncertainty. Such situations of unregulated land access originated from at least three sets of problems, or institutional weaknesses and failures.

The first concerns the authority to alienate land, or who had the right to grant exclusion and management rights to certain land-based assets. This authority sometimes remained enduringly contested by competing interests, particularly in areas with overlapping jurisdictions that were also rich in land rents. Exemplary were the ex-Olympic slopes near the Serb enclave of Strpce in southern Kosovo and the mountain town of Trnovo in Sarajevo Canton. A second set of problems concerned limited land use regulation in cities like Sarajevo and Pristina. Both cities inherited from the Communist Party collectivized lands and (broad) discretionary authority to regulate land use, yet limited institutional capacity to actually enforce land rights and to deter squatters. The third set of problems concerned land records: the official documentation informing populations about land rights on, and physical boundaries of parcels of land. Especially in post-conflict Bosnia and Kosovo, these records had become unreliable, inaccurate, and/or unsystematically organized. Or they were lost.

Each problem evolved from (at least) the beginnings of the SFRY period, and worsened with conflict. They also appeared interconnected and to contribute to situations of unregulated land access

existing after conflict formally ended. They thus may jointly have shaped incentives to engage or abstain from changing land governance in quadruple transition.

### *Contested land alienation authority*

This problem originated from two institutional legacies: the partial collectivization of land, and the decentralization of state authority over the right to alienate land. Partial collectivization meant that in some areas, there was some land owned by the municipality, other land owned by the state, and still other land that was owned by private individuals. The decentralization began under Yugoslavia, yet with the peace agreements, the establishment of privatization agencies and increased local self-government, land alienation authority was decentralized further. In some locations there were thus several layers of authority could thus (legally) claim the right to alienate land. In Kosovo's case this included local, regional and state-level actors, as well as external actors (Kostovicova and Bojicic-Dzelilovic 2006b:16), namely the UN and Serbia. This alone made contestation of land alienation authority likely. The problem was compounded by unclear land titles (see below) and formal land dispute mechanisms that were underdeveloped and distrusted (Nawaz 2008; Williams 2013). Land areas rich in natural resources and socially-owned assets were especially likely to see competing claims. In such cases, environmental, commercial, ethno-nationalist and/or international (security) interests overlapped. Prime examples were the former Olympic ski slopes at Strpce in south Kosovo and at Trnovo in Canton Sarajevo.

The institutional legacies of partial collectivization and decentralization over the authority to alienate could be traced back to the period from 1945 to 1953. This is when the SFRY gradually switched economic doctrine: from state-led centralized economic planning (which involved collectivization of land) to decentralized socialism (which devolved control over collectivized land to lower level state-affiliated entities).

Josip Broz Tito emerged victorious at the end of the Second World War at the head of a

communist government. His party had long intended to consolidate power by emulating the Soviet path to economic modernization (Lampe 2000:233). The pre-war economy had been largely based on rents from agricultural land (ibidem:188-9,233). During the war the party came in a position to collectivize this land “in the name of the nation and society” (Džilas 1957:45-6) and set out to expand its economic potential of the land through a state-led system of economic governance.

At first, party ideologues believed state-led command and control over a means of production like land would be “insecure” as long as the state did not possess a full monopoly over land rights (idem:56-8). As such, Yugoslavia’s sizeable population of private land-owning peasants posed a special threat to the party aims, given their independent capacity to create land rents. This gave them potential countervailing power to contest the party’s political authority. The party elite thus concluded it had to “subordinate the peasantry to itself economically and administratively” (idem).

The party intended to do so by restricting the rights of landowners to alienate land. It began by attempting to void private ownership altogether through collectivization. In cities full collectivization was swift (Williams 2013:149–52; Tsenkova 2009:88). Yet collectivizing rural land proved more complicated. For in 1945 many Yugoslavs remained dependent on private agriculture for survival (Lampe 2000:188-9,233). The party elite thus treaded more carefully in the countryside. There it barred all private landholding that exceeded ten hectares. Residential private property holding that exceeded three apartments was also prohibited. Anything beyond those limits was collectivized (Williams 2013:150). Collectivized land was turned over to a state-controlled ‘land fund’. Most of this would come to comprise former large estates that had been owned by politically discredited groups. The party elite could use the land fund to placate part of the peasantry, and just over half of its endowment was granted to landless or smallholding peasants (Lampe 2000:244). The remaining land the party granted to agricultural cooperatives that were under much more direct state control (European Commission 2006b:8). However, private farms proved more productive than cooperatives, and cooperatives less popular than the Party expected. Thus many peasants continued to resist collectivization (Lampe 2000:245; Williams 2013:149–51).

By the early 1950s the party decided post-war economic recovery depended too greatly on private agriculture. It deemphasized Soviet-tutelage and (eventually) collectivization and central planning (Lampe 2000:244-6,257-9). Authorities had by then collectivized around twenty per cent of arable land in Serbia and Bosnia, yet just fourteen and twelve per cent in Croatia and Slovenia. In more mountainous regions, such as Montenegro, the number was eighty per cent. Authorities collectivized half of the arable land in Macedonia (Lampe 2000:251). As the collectivization effort ended much land would remain in private hands until the end of the SFRY (European Commission 2006a:8). By 1983, 84 per cent of all arable land was in privately-held “tiny plots” (World Bank 1983:51). Nevertheless, significant amounts of agricultural and urban land was and would remain at the disposal of authorities until the end of the SFRY (Tsenkova 2009:88).

Having rejected the Soviet-style command economy, Tito’s party began to manage state-controlled property through “decentralized socialism”. The new doctrine professed to manage the means of production through state-affiliated entities. When decentralized socialism was legally enshrined in the constitutional reforms of 1953, the role of central planning from Belgrade was formally minimized. Collectivized urban real estate became municipal land (Tsenkova 2009:88) or “socially-owned” property (Williams 2013:152; Lampe 2000:233-4;311-4). The right to alienate was officially still held by ‘society’ (i.e. the state) but socially-owned enterprises (SOEs), like agricultural and construction cooperatives, could be granted exclusion and management rights to land. Municipal governments, or councils, would decide on land use through spatial planning and construction permissions (Tsenkova 2009:88).

Decentralized socialism made it seem Yugoslavia had transformed into another kind of access order: one with many more centres of countervailing power (Dolenec and Žitko 2013). For now some 3,834 local (party) committees were effectively positioned to determine who had access to many key natural and regulatory rents, including those related to land within a particular geography (their authority aligned with the borders of Yugoslavia’s 3,834 municipal jurisdictions). In addition, the local



party committees acted as connectors between republic and federal levels. Their positions were thus essential for municipalities to secure financial resources for local development, and for co-deciding the leadership of local SOEs. Local party committees also were entitled to a fixed share of the rents earned by SOEs within the municipal council's jurisdiction. Municipal councils thus became "the main prerogative of the local party apparatus (Lampe 2000:233-4,256-7).

Yet although decentralized socialism brought local cadres into key positions to receive and allocate (land) rents, they remained dependent on Federal cadres. Federal cadres retained leverage over local ones through central regulation of prices (Lampe 2000:233-34); by setting the boundaries of municipal jurisdictions; and by determining formal restrictions on private landholding. Moreover, much land remained state-owned, such as the forests in Bosnia (often already state-owned before collectivization) (Williams 2013:151) and Kosovo (Bouriaud et al. 2014). Finally, even as the Federal government continued to uphold its policy of de-emphasizing collectivization, it retained rights to collectivize it (Djilas 1957:58). In short, decentralized socialism spread out authority over collectivized land across local governments, yet it did not distribute its power to alienate more land.

Milovan Djilas, a long-time confidant of Tito, thus argued that decentralized socialism did not fundamentally change Yugoslavia's form of economic governance. The top-tier of the Party leadership, which had become like a "new class" that commanded most of the means of production, had only ostensibly decentralized its control. The party leadership dictated what rents accrued "first [to] the oligarchy, the leaders of the new class; and second, for those in the lower echelons." All that decentralized socialism had done was "give rise to the lower strata of the bureaucracy or of the new class", according to Djilas. He acknowledged that disputes between lower levels of authority over rent distribution and creation mechanisms might arise. Yet these were resolved by the party hierarchy, not by independent authority. This was to be the enduring "method, inevitable under *changing conditions*, for the further strengthening and *consolidation* of monopolistic ownership and the totalitarian authority of the new class (Djilas 1957:63)[emphasis added]". The party had simply adapted economic governance to consolidate a LAO.

However, changing economic and political conditions put pressure on this quasi-collectivist form of economic governance (Lampe 2000:234–62). Decentralized socialism over the long-run created fiscal shortages and redistribution crises. These were “always” resolved through borrowing foreign credits (Woodward 2012). However the SFRY remained vulnerable to other economic crises: debt crises (Bideleux and Jeffries 2007:299–331), balance of payments crises, and from 1979, galloping inflation (Woodward 1995:55–56). These economic crises eventually brought the Federal government to accept painful reforms in exchange for IMF lending (Lampe 2000:257–60). Still, the Party leadership in Federal government, which negotiated the IMF loans, made no significant concessions regarding current authority and restrictions on transferring land rights. Privatization efforts began but remained limited. Party cadres at republic and local government level persistently supported socially-owned property arrangements (Lampe 2000:327–8), and the Party resisted external pressure to engage in more largescale privatization up to the beginning of Yugoslavia’s political dissolution in 1989 (Bayliss 2005:38). Thus successor states inherited extensive authority over socially-owned, municipal and state-owned land in spite of external pressure to privatize.

However, party cadres eventually grew disunited over who should exercise authority over collectivized property: in other words, who should hold the rights to alienate it. The Federal government’s continued endorsement of the IMF reform package, which foretold a future of “free enterprise and property rights”, underestimated that this threatened the positions of local and republic level party cadres to limit access to local means of production, not to mention their local (patronage) network of SOEs. In addition, cuts and eventually a freeze of Federal development funds hit undeveloped regions of Bosnia and Kosovo particularly hard (Woodward 2012; 1995:51).

In response, officials and SOE managers began to seek ways to “reconcentrate” “arbitrary authority” that had been devolved through decentralized socialism (Lampe 2000:234). This occurred through collusion with regional banks (to maintain a base for rent redistribution (Kanin 2003:499–500)). Ultimately, however, tensions mounted between the different levels of government and party

hierarchy. The constituent republics and also local governments demanded greater (fiscal) responsibility over distributing (increasingly scarce) rents that the socially-owned assets generated (Woodward 1995:384). Eventually, top party cadres at a republic level began turning to a new “ideology of ethnic self-interest” (Lampe 2000:234).

By 1990, the central party hierarchy in Belgrade had caved to bottom-up pressures: it agreed to national, republic and local elections<sup>82</sup> that were open to ethnic-based parties. Voters subsequently marginalised the Yugoslav Communist Party and put ethnicity-based parties in positions of authority over the ailing Yugoslav economy (Bideleux and Jeffries 2007:145,245,342-3). With a shift from the Yugoslav LAO voters and new political parties theoretically gained (countervailing) power over land rights: an opportunity to expand private property ownership, increase democratic control on collectivization, and to allow for more ways to alienate real estate, such as privatization, leasing, auctioning, sale, public-private-partnerships etc. However, at the onset of post-communist transition the set of alienation rights remained restricted (Tsenkova 2009:88). State and republic-level legislatures had to change the relevant institutional rules-in-use.

However, where legislatures did expand alienation rights, public allegations of “insider-privatization” and “resocialization” often followed (Bideleux and Jeffries 2007:252,258–9;467). Indeed, new alienation processes, especially privatization, became known as highly contentious and opaque processes across the successor states (ibidem; Dobra & de Vries, 2016; Knudsen, 2013; Williams, 2013). Further, Serbian nationalists put new rules in-use that effectively expanded their land alienation authority. For instance, they changed rules in Kosovo so that authorities could revoke possession rights to apartments held by Kosovar Albanians if they refused a loyalty pledge to the Serbian republic (which had gained formal land ownership by revoking Kosovo’s provincial autonomy). This discrimination led many Kosovar Albanians to contest the state’s formal (land alienation) authority. This contestation turned violent in 1998. The state’s right to alienate land was also violently contested in inter-ethnic civil wars in Croatia (from 1991) and in Bosnia (from 1992)

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<sup>82</sup> Municipalities (typically) came to directly elect a local council (assembly) and a Mayor (Tsenkova 2009:76).

(Malcolm 1996, 1998). These conflicts laid the basis post-war contestation of land alienation authority.

The legacies of decentralized socialism, inter-ethnic contestation and Yugoslavia's break-up complicated, resolving questions of land alienation authority. As land-based assets had been part of a Yugoslav 'common state' (with its different forms of ownership (socially, municipal or state-owned)), questions about how to alienate those assets could not just be "internationalised" by the successor states (Kostovicova and Bojicic-Dzelilovic 2006b:16) but also localised.

This seemed especially so in Kosovo. First of all, as long as its sovereign status remained unresolved the authority to alienate real estate in Kosovo appeared contestable (Grasten and Uberti 2015). Nevertheless, the international community established the Kosovo Trust Agency (KTA) (later the Kosovo Privatization Agency (PAK)), which claimed the right to privatize socially-owned real estate. The internationals considered the ski resort in Strpce as a means to develop Kosovo: in terms of payoffs, it would be among the most attractive to potential investors, indeed a "crown jewel" (OSCE 2008b). The UN Special Representative for Kosovo (UNSRSG) supported the KTA's attempts to privatize Brezovica, given that he had a mandate to rekindle Kosovo's growth. The KTA thus began the attempt to privatize Brezovica in 1999. Yet the UNSRSG also still had the Government of Serbia (GoS) to account for. The GoS insisted that its own privatization agency (SPA) held the authority to alienate Kosovo's socially-owned assets, including those at Strpce. This stalled the KTA effort. For Serbia the economic payoffs for privatizing Brezovica were one thing. Brezovica also mattered politically. Strpce was an anchor for refugees<sup>83</sup> and this contributed to making the mountain town one of the largest Serb enclaves in southern Kosovo. Moreover, the ski resort was still run by ethnic Serbs who, like many others in Strpce, resisted cooperation with Kosovo's new authorities<sup>84</sup>, including the KTA. Although the resort suffered from underinvestment it still employed

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<sup>83</sup> Serbs who fled the towns of the Kosovo's central plateau below. In order to cope, they had confiscated SOE property, like the hotels along the road to the ski resort, and improvised them as temporary homes. Interview anonymous Strpce citizen (AI.40), Strpce, 28.09.2015

<sup>84</sup> Many local Serbs refused to participate in local elections monitored by the international organizations (Bideleux and Jeffries 2007:563567) and by extent with the municipal authority under UNMIK that liberal state-builders recognized.

many local Serbs (Bilefsky 2007) (locals otherwise depended on local (illegal) forestry and private agriculture (Bouriaud et al. 2014; OSCE 2006b; Tuomasjukka 2010). Strpce Serbs thus feared privatization by the KTA would be like a Trojan horse that would destroy local employment, livelihoods and the Serb community itself (OSCE 2006a). The multiple diverging interests led to a situation where the formal right to privatize Brezovica was contested internationally and locally. That made it unclear how, and if the land at the ski resort could be alienated.

In post-war Bosnia, contested land alienation authority resulted more from the legacy of decentralized socialism and the Dayton Peace Agreement (DPA) than privatization problems. The DPA increased the number of actors that could claim the authority to enable or restrict the right to alienating land in a given area. During the SFRY-period, Sarajevo had already had several municipal councils and mayors (Tsenkova 2009:76). While the Inter-Entity Boundary Line (IEBL) excluded a part of territory from Sarajevo's jurisdiction (granting it to the RS), it also allowed four 'city' and six 'rural' municipalities to keep autonomous powers over municipal land. Further, Dayton added another layer of government, the Canton, which could set land use restrictions for all ten municipalities (Fischer 2006; Legrand 2013). Dayton also allowed the Federation (of BiH) to claim authority to set land use rules at the entity level. Already during Yugoslavia the fragmentation of authority over land had "raised serious questions related to institutional capacity" (Tsenkova 2009:76). Now the possibility for inter-jurisdictional contestation seemed to have increased, given that so many actors could potentially decide over land alienation and land use rules. After conflict, contestation seemed especially likely high if the land was rich in valuable resources and socially-owned property assets, as well as subject to (potentially) competing interests how to use these.

Such an area lay south of Sarajevo, around mount Bjelasnica. The heavily forested area, exploited by (licensed and unlicensed) foresters (World Bank 2008), also served as supply for Sarajevo's water reserves. Further, Bjelasnica was home to the war-ravaged facilities of the 1984 Winter Olympic Games, which were formally still managed by an SOE. After the Olympics, the Bosnian Socialist

Republic had developed a plan to make the mountain part of a national park. This plan had not been adopted before the war. Yet soon after the war ended, the Federation (of BiH) investigated whether that plan could finally be adopted and implemented. This raised the possibility that lower levels of authority, especially local municipalities that owned part of the land, would resist institutionalization of a national park out of fear that it would restrict local land management, exclusion and alienation rights, and by extent the possibilities for using the land for local industry and tourism. In other words, the interest to preserve the area's resources at one level of authority might well come into conflict with the interests of a local municipality like Trnovo to redevelop the tourism industry.<sup>85</sup>

Thus, despite, the significant economic potential in Strpce and Trnovo, questions about how to reconcile competing interests and to overcome contested land alienation authority remained unresolved. Yet a prolonged status quo also had risks. Even if contestation over the right to alienate continued indefinitely, exposure to the mountain climate may cause the assets in both areas to depreciate. Depreciation would in turn make it increasingly less likely that (re)investment would take place. That could threaten the economic survival of these two (relatively speaking) geographically isolated local communities. It could also mean that the common pool resources around the mountains, including water and woods would become more vulnerable to unregulated access problems (including illegal construction, overexploitation or pollution).

Knowing that in 2015 a large-scale, long-term land lease was agreed in Strpce and Trnovo (see introduction), questions remained about how these outcomes emerged. Firstly, did domestic and external actors seek to resolve the problem of contested land alienation authority, and if so when and why? Second, how did they do so? Finally, what did the outcome mean: had institutional changes, in so far as they took place, simply enabled rent-seeking and a local land alienation deal? Or had these consolidated an impersonalized form of economic governance and thus enabled each deal?

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<sup>85</sup> See chapter 5.

### *Limited land use regulation*

A second problem that authorities in the successor states often inherited concerned a limited institutional capacity to regulate land use and prevent illegal construction. During Yugoslavia municipal officials created and updated spatial plans to permit land use for recreational, industrial or agricultural purposes, or to environmentally protect certain areas (Pleskovic 1988:283). Spatial plans, thus helped determine the conditions for how land could be used. However, these plans were often not put fully into use. Enforcement fell short, and squatters took advantage, particularly in peri-urban areas. This enduring problem was another source of unregulated land access after conflict. When spatial plans and land use permits were not enforced, the credibility of formal land rights was undermined, risking that these became empty shells. That opened possibilities for more illegal construction, as it set precedents. Moreover, illegal construction also risked creating public hazards, such as water shortages, blackouts and congested highways.

Illegal construction became a problem well before Yugoslavia's collapse. It originated from housing shortages, particularly in larger industrialized and/or administrative cities like Belgrade, Ljubljana, Sarajevo and Pristina, which the SFRY quasi-command economy increasingly struggled to resolve (Hegedus, Tosics, and Turner 2005; Pleskovic 1988; Tsenkova 2009:32). Since urban land had been collectivized (see above) local government was effectively made responsible for housing provision. In 1945 the immediate problem they faced was providing housing to those who were made homeless by war (Tsenkova 2009:31). Yet since with industrialization many rural job-seekers were attracted to cities, the greater challenge became providing homes for a growing urban population that lived in smaller households (see figure below).<sup>86</sup>

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<sup>86</sup> This included farmers who figured regulation of private farming made the payoffs to non-collectivized farming too low (World Bank 2006:1-2). Still, rural migrants often held on to private land as a source of family subsistence or as a hedge against economic insecurity (Williams 2013:149-51).

Table 5: Population and Household Growth in Yugoslavia in thousands (Pleskovic 1988).

City	Population				Households			
	1953	1961	1971	1981	1953	1961	1971	1981
Belgrade	593	942	1209	1470	135	319	491	484
Zagreb	456	459	733	855	104	164	249	288
Split	98	132	185	235	14	40	214	245
Ljubljana	157	206	257	305	N.A.	69	88	109
Sarajevo	N.A.	213	359	448	N.A.	64	101	136
Skopje	168	270	388	556	27	58	96	123

The new local authorities soon recognized that if insufficient housing was provided by the state, then urban expansion would become unregulated.<sup>87</sup> That could threaten social stability.

The constitutional reforms of 1953 made housing a constitutional right (Tsenkova 2009:29) and most urban land and many apartments were converted to socially-owned property. State and municipal governments were made co-responsible for solving the housing problem, alongside the state and SOEs. First, even if SOEs held exclusion rights and management rights, municipalities co-determined the allocation of possession rights for individual apartments (based on official criteria and waiting lists (Tsenkova, 2009:29)).<sup>88</sup> Second, municipalities granted building permissions (management rights) to SOEs in accordance with construction regulations and spatial planning (in return for SOEs paying for the extension of public infrastructure to the SOE property). Third, housing was to be partly financed by SOE employees, who paid into a centralized state housing fund (O Tuathail and Dahlman 2006:306). This fund was then centrally distributed to local cadres, who would then need to reallocate it for local SOEs' housing construction. Housing supply thus depended on a hierarchy of party-affiliated actors who controlled all relevant responsibilities (possession, management and exclusion rights) *and* resources (finances, materials and land) (Tsenkova 2009:47–48).

<sup>87</sup> State statistics showed apartment overcrowding, and overburdened water and sewage infrastructure (Tsenkova, Potsiou, and Badyina 2009:34–35).

<sup>88</sup> Possession rights could be re-allocated by the municipality, but essentially were permanent (Williams 2013:151) and inheritable (O Tuathail and Dahlman 2006:306).



This system proved too complex and inadequate to address persistent housing shortages. As industrialization begot urbanization, the amount of housing demanded exceeded social housing supplied (Pleskovic 1988:291–8). Municipal spatial plans had mandated (disproportionally) construction of high-rises over private housing (at an eighty/twenty ratio), even if constructing high rises was fiscally costly; prone to construction delays; and frequently unaffordable for the low-skilled, low-earning, rural migrants arriving in Yugoslavia’s main cities in the 1960s (ibidem 1988:288–89,292). Waiting lists grew, even for those who could afford the apartments. In response, an already cash-strapped Federal government decided to direct funding away from housing investment (Tsenkova 2009:30–32), while at the same time granting SOEs authority to disburse housing credit to employees (Pleskovic 1988:280). Thus a quasi-privatized housing construction sector was strengthened, at least in theory. The financing of apartment construction could now come from communal housing funds, SOE credits, commercial loans and private savings (Pleskovic 1988:280). This ‘shift’ away from state-led housing provision had some effect (see figure 7), and private sector investment in construction had outpaced the public sector by the early sixties (Tsenkova 2009:31). Still, housing demand continued to exceed supply. By the end of the SFRY period the state had privatized some social housing, and attempted an expansion of housing construction finance (Hegedus et al. 2005:296–307). Yet as inflation mounted in the eighties<sup>89</sup>, the costs of borrowing rose, leaving lower-income households even fewer housing finance options (Mandic 1990:267). This was not helped by the lack of clear land records, which made reliable mortgaging very difficult (see below). Moreover, land alienation remained severely restricted (see above). This is not to mention the other resource scarcities that helped ensure persistent supply-side problems in housing provision.

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<sup>89</sup> In 1984 inflation rose to fifty per cent evolved, and subsequently became hyperinflation. It was abruptly halted in 1991 (Woodward 1995:383).

City	<i>Illegal Housing as Percentage of Total</i>
Belgrade	52.1
Zagreb	39.5
Banja Luka	41.9
Osijek	66.8
Split	49.3
Novi Sad	49.3
Pristina	36.3
Smederevo	69.9
Tetovo	39.0
Tuzla	58.9

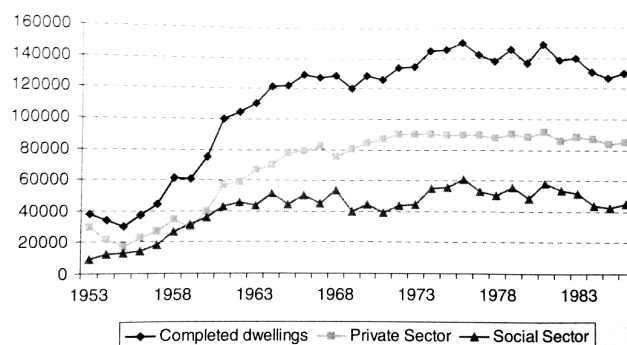


Figure 6 and 7: Informal housing construction, 1961-7<sup>90</sup>, and formal construction investment in the SFRY, 1953-1989 (Figure 6: Pleskovic 1988:283. Figure 7: Tsenkova 2009:40).

The enduring housing shortages led to squatting and illegal construction, particularly in urban peripheries. Illegal construction truly took off from the 1960s. Pleskovic estimated that in this period around half of the total of houses built in the larger Yugoslav cities were illegally constructed (see figures above). Many resorted to illegal construction because they lacked the means to secure a land use permission (Williams 2013:151–52). Workers built illegally when they found their salaries sufficient for self-help housing, but insufficient for a high-rise apartments (Pleskovic 1988:292–93). Moreover, (new) urban dwellers also resorted to informal housing construction for want of the right job (Williams 2013:151–52), the right connections<sup>91</sup>, and/or the right ethnicity.<sup>92</sup> Briefly, squatters were poorly positioned to secure housing opportunities formally.

Local authorities did possess resources and responsibilities to prevent unpermitted construction. However, often capacities to enforce land use rules proved insufficient, particularly in urban peripheries. These areas often lacked regulatory plans. These plans provided the most detailed rules for land use plans but took significant time and resources to develop (Pinkowski 2015). Moreover, squatters found legal loopholes even when these plans did exist.<sup>93</sup> Moreover, squatters took advantage of inspectors failing to respond in time (Pleskovic 1988:295). Even where enforcers caught violators of

<sup>90</sup> Between 1976 and 1982, nearly 4 in 10 dwellings (thirty-eight percent) was constructed illegally. In lower income areas this was sixty-five per cent (Pleskovic 1988).

<sup>91</sup> Broad discretionary authority combined with the shortage of quality housing incentivized using apartment allocation authority as a rent-seeking device: to reward political allies or to compensate for officials' low wages (Sillince 1990:50; found in Tsenkova (2009:32)).

<sup>92</sup> Housing allocation discrimination consistently transpired against Roma, and (from March 1989) ethnic Albanians (Danielsson 2014; Tsenkova 2009:108).

<sup>93</sup> For example, once a home had a roof, an inspector were *not* allowed to have it torn down (immediately). Sarajevo's squatters took advantage of this over the inspector's weekends. Interview independent Bosnian urbanism expert (AI.12), Sarajevo, 20.11.2015.

land use regulations, their sanctioning remained weak. Inspectors frequently kept fines low against encroachers of peri-urban land because municipal authorities had not yet adopted regulatory plans in that area. More drastic countermeasures against squatters, like demolition, were few, and commonly resisted by their friends and neighbours. Sometimes resistance was even joined by the demolition crews responsible for evicting the squatters (Pleskovic 1988:292). Municipal councils and planners also searched for solutions involving compromise and cooperation. Yet more often they focussed on improving enforcement. Yet serious efforts to eliminate the source of the problem, the persistent shortages of affordable housing, did not emerge (Pleskovic 1988:292; Tsenkova 2009:52).

Generally speaking, Yugoslav local governments, urban planners and land use inspectors effectively tolerated squatting on urban peripheries through neglect (Pleskovic 1988:298). Thus the payoffs of squatting outweighed its costs, and illegal construction persisted. Yet ‘permanent’ squatters faced costs, especially legal insecurity. As Burns et.al. comment (with regard to Yugoslavia and similar countries nearby) squatters were barred from securing land rights “that they had occupied in good faith for decades” (2007). True, initially tense relationships between inspectors and squatters could eventually lead to informal cooperation (Tsenkova, Potsiou & Badyina, 2009:9–10), or in some cases even legalisation: i.e. providing formal land rights. Yet, where legalization was attempted it often just meant updating urban plans and granting temporary possession rights, not full ownership or alienation rights (Pleskovic 1988). Local authorities also faced incentives to not legalize squatted land because legalization would require them to expand (hard to afford) public infrastructure (Williams 2013:152).

Pleskovic remarked shortly prior to Yugoslavia’s collapse that the housing situation appeared not “critical” given “low land-use densities, availability of open space, and...a wide tolerance of self-help black housing on the peripheries of cities” (Pleskovic 1988:298). Yet illegal construction constituted an indelible legacy that indicated that existing land use regulation was an empty shell in significant parts of cities. As much urban land remained vacant and unregulated, it remained potentially

vulnerable to further encroachment. In retrospect, the risk of the problem of limited land use regulation actually increasing seemed high in post-socialist land use governance, especially in former-SFRY capitals like Sarajevo (Legrand 2013) and Kosovo (Vöckler 2008). As Tsenkova writes:

The legacy of a system which did not recognize private property of urban land, coupled with the lack of adequate property registration of property rights [see section below], [was] a major constraint for implementation of an effective planning framework in these countries...the primary problem is access to land and [a] cumbersome planning and building permit process...massive illegal construction, especially on the periphery of urban settlements, testifies to a failure to develop a coherent and comprehensive urban planning and zoning policy. Failure to establish transparent and consistent procedures for the auctioning of the building land and the issuance of the necessary construction permits also contribute[d] to the high-volume of illegal construction” (Tsenkova 2009:88).

Additionally, post-socialist local governments frequently lacked budgets and had difficulties to tax real estate. If they wanted to prevent a problem like limited land use regulation, they thus needed to act as “crisis managers”: actors with more formal “responsibilities” than resources “to address those problems” (Tsenkova 2009:75). By contrast, for individuals, the costs of resorting to illegal construction were likely less high than the immediate benefits (like shelter) (Tsenkova et al. 2009:32), while potential benefits of conforming to land use rules, like being able to secure a mortgage were often were not yet possible within the legal framework (Tsenkova, 2009:75–6,88,219).

This risk of encroachment seemed especially high in post-conflict Sarajevo (which had been heavily damaged) and Pristina. Not only were land use regulations outdated; permit procedures slow; and enforcement capacity weak or crippled<sup>94</sup>; but both became centres of liberal state-building efforts, and soon drew in IDPs, émigrés and internationals seeking jobs and business opportunities.<sup>95</sup>

In observing the outcomes of land use governance in 2015 in Sarajevo and Pristina mentioned in the introduction, questions remained. Firstly, did domestic and external actors (really) respond to the

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<sup>94</sup> See chapter 4 and 7.

<sup>95</sup> Also other ex-Yugoslav cities suffered encroachment problems. The Belgrade Suburb of Kaludjerica quadrupled in size as thousands of ethnically Serb refugees from Bosnia, Croatia and Kosovo fled the Yugoslav wars. In 2009 eleven per cent of Macedonia’s population called an informal squatter settlement home (Tsenkova 2009:9–10). This trend was moderated by emigration and population decline across the former Yugoslavia (Tsenkova 2009:3,59).

above-mentioned problems of limited land use regulation, particularly illegal construction, and if so when and why? Second, how did they respond? Finally, did the outcomes suggest institutions changed to consolidate rent-seeking opportunities or had land use governance come to work impersonally?

### *Unreliable land records*

The problem of unreliable land records was another source of unregulated land access in the successor states after Yugoslavia collapsed. The land records were important: for they provided official information regarding the legal and physical properties of land rights for each parcel. Yet Tsenkova (2009:75) uses sources that suggest that by the early 2000s less than sixty per cent of the territory of the former Yugoslavia (excluding Slovenia) was reliably covered by such records. Land records seemed especially unreliable in Bosnia and Kosovo, where many were rendered inaccurate; or unsystematically recorded; or lost (Butler et al. 2004; Merrill, Rabenhorst, and Butler 2004; Todorovski, Zevenbergen, and Molen 2016). Resultantly, formal information recorded about many land rights did not correspond to the actual reality of land use. Without reliable land records, land rights were at risk of becoming empty shells.

The origins of this problem predated the SFRY's dissolution.

Most, but not all, successor states (but not Kosovo)<sup>96</sup> inherited a system for recording land rights that is called a 'dual' land registration system: it was colloquially called the "Grunt" (US Consular Services BiH 2009). This system was operated by two separate hierarchies. One half of the land records was updated by clerks in local courts. They recorded changes in rights on real property vis-a-vis a numbered parcel in so-called land registry books. The other half was the land survey. This provided geographical information about the same parcel: it graphically depicted its shape, measures and structures. The land survey was updated by land surveyors and administered by cadastral (a.k.a. geodetic) officials. The information in both halves of the dual land registration system were supposed

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<sup>96</sup> Interview Geodetic Official (AL10), 14.10.2015, Sarajevo.

to be complementary and in harmony.

The Austro-Hungarians had introduced the system in order to more accurately, systematically and accountably register (and enforce) land rights than the Ottomans had (Malcolm 1996). Making two hierarchies responsible for recording land records that worked independently from each other to create harmonized land rights would (in theory) restrict opportunities for manipulating land records and rent-seeking. This was because the system gave court and geodetic officials control over verifying the accuracy and reliability of the official records. Formally, the dual land registration survived the 20<sup>th</sup> century up to the post-1995 era. Yet by then the Grunt had in many court land registries become an empty shell that no longer kept track of changes in de-facto land ownership and use (Williams 2013).

This historical development had several causes. This included the recurrence of wars and state-led redistributive land reallocations in the twentieth century (including Yugoslav collectivization and partial privatization at the end of the Yugoslav period). When land ownership was changed by physical and/or violent force, land records were often not updated in dual land registration systems (CRPC 2004). Moreover, the SFRY limited private land ownership to ten hectares, restricted credit access and imposed tax obligations. With the potential benefits low and costs high, the incentives for private landowners to record their land rights in the Grunt were thus much reduced (CRPC 2004:Annex D,1).

Even as the Grunt became decreasingly less accurate, Tito introduced another land registration system. This one was known as the “Katastar” (US Consular Services BiH 2009). Its purpose was to register possession rights on socialized land, buildings and apartments. The Katastar fitted state-led industrialization and top-down urban planning, while its maps were more accurate compared to the old surveys of the Grunt (the Katastar relied on modern aerial land surveys (Specht-Mohl 2015:21)).

Yet as the economy slumped in the eighties Yugoslav cadastral authorities recognized that it was necessary to enhance the accuracy of all land records, including those of the Grunt. Significant segments of Yugoslavia’s agricultural resources remained untapped. This was not just due to

encroachment (see above), but also the fragmented pattern of individual (agricultural) land use. The Federal government's 1981-85 Social Plan therefore aimed to consolidate privately owned agricultural land. Yet to do so *and* compensate Yugoslavia's many smallholding farmers (World Bank 1983) the government believed it necessary to reconcile land records across systems. It thus adopted the 1984 "Law on Surveying and Real Estate Cadastre" which intended to integrate all legal and graphical information about land rights in a single database. Cadastral authorities thus began to harmonize the outdated land surveys from the Grunt with those of the Katastar in a single land registration system: the Real Estate Cadastre (REC). However, by 1992, with Yugoslavia falling apart, this process of creating a single land registration system had not been completed (Horisberger 2004:7). After conflict many areas had three land registration systems: the REC, Katastar and the Grunt (see next chapter).

The wars in Yugoslavia effectively created a situation of unregulated access, as it allowed ethnic cleansing and displacement<sup>97</sup> and thus opportunistic and ad-hoc seizures of real estate. Apart from the significant human costs, this exacerbated the problem of unreliable land records. Still, the degree varied across court land registry and cadastral offices. In Bosnia land records were destroyed, manipulated or moved across entity or international boundaries. One estimate was that just one-third of records on real ownership survived the latest war "intact" (CRPC 2004:annex.B,D). In Kosovo the UN estimated approximately half of the original land records had disappeared after conflict (UN Habitat 2007:75). Largely this seemed a result of Yugoslav forces spiriting these to Serbia.<sup>98</sup>

The problem of unreliable land records was a potentially central defect in post-war land governance. It hamstrung local authorities' ability and authority to stand by the reliability of information about recorded land rights. The uncertainty that this created risked spilling over into land use and alienation governance, as well economic governance more generally. For many Bosnians and Kosovars would be ill-positioned to take advantage of the economic and administrative benefits that clearly recorded

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<sup>97</sup> More than 2 million were made homeless and displaced across the region by 1995, while more than 220 thousand remained displaced internally in Serbia and Montenegro (Tsenkova et al. 2009:31). Return was difficult, if only for the basic reason that much housing was destroyed: In Bosnia 37 per cent of the total housing stock was destroyed, in Kosovo 30 per cent was reportedly damaged, and in Croatia 13 percent was damaged or destroyed (ibidem:18).

<sup>98</sup> See chapter 6.

and reliable legal information about land rights could provide. Further, as some actors had benefitted from wartime opportunities to seize real property without recording these seizures, the stage was set for confrontation: Both with the (external) advocates of restitution who would want real property to return to the legal (refugee) owners and with any advocates for clarifying land records more generally. In short, the problem of unreliable land records was possibly central to the politics of state and market (re)formation in Bosnia and Kosovo.

The outcomes mentioned in the introduction suggest that both in Bosnia and Kosovo land registration governance had vastly improved and been reformed by 2015. Yet questions remained. Firstly, to what extent did domestic and external actors respond to problems of unreliable land records, and if so when and why? Second, how did they drive change processes? Finally, what did the outcomes of the processes of land registration reform consolidate? Did they enable privileged access to land rents and/or come to function impersonally, serving broader interests?

## **External problem-solving approaches**

This second part of the chapter considers the approaches to solve problems in post-conflict land governance in the former Yugoslavia. It focusses on the dominant liberal state-building actors that were active during Yugoslavia's dissolution and from the outset of peace up to roughly the end of 2015, namely the IFIs, US, and especially the EU. It is examined how during this period the problem-solving approaches held by these external actors evolved vis-à-vis land governance generally. It also considers how these approaches potentially related to the specific above-mentioned problems and possibly influenced situations of land governance change in each case study.

### *Three overarching agendas to open access to land rents*

Evidently, before peace the leading liberal state-builders did not recognize the problems mentioned above. Yet they did advocate three agendas that intended to influence situations that related to these problems in land governance. The restitution agenda advocated to restore land rights to the pre-war



status quo so to enable refugee return. The privatization agenda advocated to give private actors more access to the economy by reducing government ownership of the means of production, including land. A third agenda advocated conformity with EU laws and norms, including regarding land rights. This agenda incorporated both the restitution and privatization agendas. All three agendas had in common that they appeared to aim to promote “liberal peace” and that all aimed to make access to land rents less restricted. I.e. the agendas advocated for a more open access order (OAO).<sup>99</sup>

The restitution agenda emerged during Yugoslavia’s dissolution. The US and its European allies worried that without providing refugees legally secure opportunities to return to their properties there was a risk of humanitarian crises worsening and further regional instability.<sup>100</sup> The solution they found in Bosnia was to make domestic authorities legally responsible. They thus hoped to force local authorities to cooperate in dealing with widespread illegal occupation of property and to enable the processing of individual claims to restitute real property rights affected by war. This solution was emulated in Kosovo (there a requirement was added that property seizures in the 1990s based on discriminating laws ought to be restituted as well (Katz and Philpott 2006:97)). Liberal state-builders thus enshrined restitution in the peace agreements and the constitution, and related them to international and European human rights norm (Bideleux & Jeffries, 2007:352-5,446,538; Katz and Philpott 2006:89-90). The peace agreements also made specific institutions responsible for processing restitution claims. These were also mandated to carry out work across the region. In Bosnia this institution was the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). In Kosovo it was the Housing and Property Directorate (HPD).<sup>101</sup> Importantly, to implement their mission the CRPC and HPD needed to engage to some degree with the problem of unreliable land records. Restitution depended on information about land rights, at least in so far as the property of eligible (refugee) claimants were concerned (Buyse 2008; Kretsi 2007).

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<sup>99</sup> Generalizing about the level of coherence between the “causal beliefs” of liberal state-builders in this way is problematic (Berdal and Zaum 2013:8), as was also acknowledged in the introduction. The thesis nevertheless finds it justified for reasons of scope. It does recognize mandates of liberal state-building actors differed across each successor states and across time.

<sup>100</sup> E.g. see Lake (1993).

<sup>101</sup> The HPD was “[m]odelled on Bosnia’s CRPC, though seeking to correct its deficiencies, its tasks were to remedy illegal occupation that persisted after March 22, 1999 and discriminatory losses of residential property and informal transactions that occurred during the 1989-1999 conflict period” (Katz and Philpott 2006:97).

The privatization agenda was also formed before the signing of peace. Influential western economists had already prescribed privatization across the developing world in the previous decade and had made some headway in the SFRY (see above). Their views –epitomized by the Milton Friedman’s (in)famous ‘privatize, privatize, privatize’ recommendation (see epitaph)– were that state ownership tended toward outcomes that structurally enabled rent-seeking and unproductive economic decision-making. Yet their views appeared validated when countries that had collectivized large amounts of land and other assets, (like CEE countries) suffered political and economic crisis (Hellman 1998; Przeworski 1991; Sachs [in Yergin] 2000). Privatization thus became a key pillar of the “consensus” between Washington-based IFIs and the US Treasury. This consensus entailed that when countries requested technical assistance and conditional lending from IFIs, these international lenders would require privatization in return (Williamson 1990). The need to privatize and open access to rents in general through market-oriented reforms was also enshrined in the Dayton constitution<sup>102</sup>, as well as in the mandate of UNMIK’s founding institutions.<sup>103</sup> Some argued the IFIs, U.S. and EU thus had created a legal basis and possibility for promoting reforms in the “real estate sector” also (Rabenhorst 2000:3-4).

The third, Europeanization agenda applied formally in the Western Balkans once the SAA was declared at 2003 (see introduction). However, this agenda had possible influence on Bosnia and Kosovo well before they thus obtained a formal EU membership perspective. Key EU (and US) policymakers had already indicated that the restitution (humanitarian) and privatization agendas were linked, and complementary and necessary for eventual European integration (e.g. see Verheugen (2000) cf. Lake (1993)). This link seemed implicit in the 1993 Copenhagen Criteria for EU accession, considering that restitution could be related to the political/rule of law criterion and privatization to the economic criterion (European Council 1993).<sup>104</sup> However, what made the Europeanization agenda

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<sup>102</sup> The DPA’s preamble referred to creating “wealth” by promoting “the protection of private property and...a market economy” (Dayton 1995).

<sup>103</sup> UNMIK was founded on UNSCR1244. On this basis, the UNSRSG was granted authority to supervise Kosovo’s administration, including over non-privately-owned properties. As one of its first acts UNMIK legislated that the privatization of socially-owned property was to be carried out by the Kosovo Trust Agency (KTA). The KTA’s 8 member board, whose members were vetted by the UNSRSG, decided inter alia on which assets to privatize and when (UNMIK 1999a).

<sup>104</sup> See e.g. European Commission (2013b, 2016) or European Parliament (2010).

truly distinct from the privatization and restitution agendas was the third criterion of the 1993 Copenhagen criteria, the approximation of the EU's body of sector-specific rules, the *acquis communautaire*.

### *Acquis and non-acquis-based conditionality*

Considering only the *acquis*, EU conditionality had limited scope and thus potential to change domestic land governance. Internal market rules forbade discrimination against existing or potential interests of “foreign nationals” in Bosnian (or Kosovar) real estate. Yet the EU could “not impose specific requirements on member nations or aspiring members with regard to the property sector” (art.222 TFEU). Thus, the *acquis* explicitly stated that legislating rules on real property ownership was to remain a prerogative of the member state (Rabenhorst 2000:4). This also meant it would be more difficult for the EU to insist on privatization in the successor states. The same held for restitution, for which no specific *acquis* was developed. Accordingly, when it came to restitution processes the EU kept its role limited to acting as a guardian of procedures, not as “a reviewer of substance” (European Parliament, 2010:34). Therefore the EU could not fully back up the above-mentioned agendas with *acquis*-based conditionality, specific standards or targets to evaluate compliance with. This made it harder for the EU to induce domestic elites to change particular aspects of land governance at some stage of the accession process.

However, this difficulty seemed to change with time. Firstly non-*acquis* conditionality vis-à-vis land governance emerged from around 1999. The EU and its liberal state-building allies had by then spent sizeable resources (aid) on the post-war recovery, and this was believed to have significantly boosted economic activity.<sup>105</sup> Around this time, they began to use their aid-granting positions to pressure local governments meet their responsibilities under the peace agreements (ReliefWeb 1998; Katz and Philpott 2006:97). Aid would be granted on the condition of certain reforms taking place. Arguably

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<sup>105</sup> Aid for enabling restitution, return and reconstruction processes became an important source of capital in post-war economies (IMF 2004, 2006; Pugh 2002:473–74).

this non-acquis-based form of conditionality was rendered less effective due to “corruption” (Hedges 1999) as well as the steady reduction of post-war reconstruction-related aid flows. Yet besides aid as leverage there were other forms of non-acquis based conditionality that emerged. The OHR and the UNSRSG were granted authority to take executive action and to legislate unilaterally (in 1997 and 1999 respectively) if this related to the peace settlements. Instead of exercising this authority, they could use it to force domestic governments to change specific areas of (economic) governance.<sup>106</sup> In addition, the EU launched the Stability Pact for South Eastern Europe signed in Sarajevo in the summer of 1999. This formally pledged the successor states to create a vibrant market economy based on opening “to private sector investment ... and diversified ownership” (European Council 1999:10). Thus, while the European integration agenda lacked acquis on land governance, non-acquis-based forms of conditionality could potentially compensate to solve problems in land governance.

The potential and scope for using non-acquis-based conditionality generally appeared to increase with time. Further the EU could (theoretically) rely on specific performance criteria developed by other donors to demand specific changes in land governance in its progress reports.<sup>107</sup> For instance, EU progress reports began to refer to the World Bank’s doing business index on land (property) registration once the World Bank began to measure this for particular successor states (European Commission 2006b). A similar dynamic was seen in land use governance, particularly vis-à-vis construction permitting.<sup>108</sup> In addition, from 2011 the EU endorsed the Food and Agriculture Organization’s (FAO) Voluntary Guidelines on the responsible Governance of Tenure (European Union 2011). This gave the EU a further tool to potentially encourage Western Balkan states to approximate this standard of ‘good land governance’. On their own, the World Bank and FAO

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<sup>106</sup> An important difference was that the OHR’s so-called Bonn powers were to be used in situations where domestic governments were seen to act in ways that endangered the peace (as an accountability mechanism). The UNSRSG and UNMIK were authorized to legislate and implement decisions regardless of whether there such emergencies (van Willigen 2012:433).

<sup>107</sup> EU progress reports were drafted for the successor states after promising them the membership perspective in 2003 (see below).

<sup>108</sup> The EC started reporting on construction permitting in Bosnia (with regard to the RS) in 2008: it did so evidently in response to the DBI rankings and a guillotine “reform process” that had started there (European Commission 2008a:29). It subsequently did not report on this consistently on this or distinguish between cantons/entities. In Kosovo, it started reporting on illegal construction from its first report (European Commission 2005b:18), and it would do so repeatedly and with regard to different localities in subsequent progress reports (European Commission 2008b:21–22, 2015:49,55).

standards might not carry weight in the successor states. Yet if the EU endorsed them in progress reports (see below), the EU could effectively link these to the Copenhagen criteria, and thus to conditionality. Moreover, unlike many donors that began to shift funds out of the region, the EU would continue to be in a position to grant pre-accession funds. Thus it could potentially continue to use this form of aid as non-acquis-based conditionality (Katz and Philpott 2006; European Parliament, 2010:33). Finally, the EU could coordinate with IFIs like the IMF to make successor state lending conditional on certain economic reforms (for which both the EU and IMF had a mandate).<sup>109</sup>

On the other hand, the scope of liberal-state builders to influence land governance change via non-acquis-based conditionality seemed dependent on time and context.

E.g. in Bosnia and Kosovo, the EU gained a position to influence domestic (economic) reform processes when the leading liberal state-builders agreed to make the EUSR in Bosnia the head of the OHR, and the EUSR for Kosovo/Serbia the head of the ICO.<sup>110</sup> Yet this potential source of non-acquis-based conditionality lasted only as long as the OHR and ICO had a mandate to exercise this powerful position of authority (it would last up to 2006 and 2012 respectively). Similarly, from the mid-2000s the EU periodically updated the so-called European Partnership Action Plans (EPAPs). These integrated some of the standards that other donors and domestic governments used, including standards specifically related to areas of land governance. EPAPs set targets, deadlines, and responsible actors to drive changes in these areas. However, the EPAPs were discontinued from 2012.<sup>111</sup> Also at a regional level, time-specific targets were set. For instance, the EU, Western Balkan governments and UNMIK signed the Vienna Declaration on Informal Settlements in 2005.<sup>112</sup> This

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<sup>109</sup> After conflict Yugoslav successor states faced exchange rate crises, inflation and inherited SFRY debt (including debt to the IFIs). IFIs like the IMF and World Bank were thus positioned to set conditionality when successor states requested emergency support. The IMF also had a mandate to provide technical assistance to resolve and prevent macroeconomic instability (IMF 2004, 2006).

<sup>110</sup> See introduction. In Bosnia the Peace Implementation Council (PIC) was the institution mandated to determine whether the DPA was being implemented and decided on who would be High Representative. Two of the PIC's most prominent members were the US and the EU Presidency (see chapter 3). Besides the International Civilian Office (ICO), the EU and US also bore influence on the Special Representative of the Secretary General of the United Nations (SRSG) in Kosovo, who monitored implementation of the peace settlements (i.e. UNSCR1244, and from 2008 the Ahtisaari plan (Capussela 2015; Ker-Lindsay 2009).

<sup>111</sup> For no apparent reason. Interview Bosnian Officials responsible for European Integration (AI.13), Sarajevo, 2.12.2015.

<sup>112</sup> The Vienna declaration defined informal settlements as "human settlements, which for a variety of reasons do not meet requirements for legal recognition (and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations) and hamper economic development" (Vienna Declaration 2004:1).

declaration announced that resolving informal settlements “will be” a key requirement for the EU accession of Western Balkan countries (Vienna Declaration 2004:1). It added that there would be a “complete regional resolution of informal settlements by the year 2015, with national targets to be set by January 2005.”. What would happen if these goals were not met in time remained unclear, however (how progress toward these goals would be monitored was also vague).<sup>113</sup> A final example of how context and time dependent non-acquis-based conditionality could be is when EU eventually made the return of Kosovo’s land records from Serbia a condition for both countries’ progress in the EU accession talks (in 2013).<sup>114</sup> This conditionality emerged because a specific problem (the return of the cadastre) had endured since the early post-war period, not because new acquis was developed.<sup>115</sup>

Thus, the scope of externally-inducing change via non-acquis based conditionality was variable with time and context. That meant non-acquis conditionality was likely ad-hoc and incoherent. That raised the question whether it could potentially affect situational rules and outcomes of changing land governance.

Yet acquis-based conditionality potentially increased with time. The EU member states created acquis in areas of land governance where it did not have explicit competence before. Of note is the INSPIRE directive adopted in 2007. INSPIRE required EU member states to digitize “existing Land Use”. Its stated aim was to “objectively depict...the use and functions of a territory as it has been and effectively still is in real life” as well as “Planned Land Use which corresponds to spatial plans, defined by spatial planning authorities, depicting the possible utilization of the land in the future”.<sup>116</sup> It thus directly pertained to land registration and land use governance. While the EU only required compliance with this law only once a country opened the relevant chapter in the accession

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<sup>113</sup> Regular “Regional Review Meetings” in the “Regional Capacity Strengthening Programme for Urban Development and Housing (RCSP)” were meant as an opportunity for “sharing experiences and information between SEE countries on the existing situation of informal settlements, legalization process, and future planned projects” (UN Habitat 2010 cf. Gabriel 2007). EU progress reports (for Kosovo and Bosnia) did monitor illegal construction, but never referred to the Vienna Declaration, thus making it less clear whether the Declaration was a form of conditionality at all.

<sup>114</sup> International expert (AI8), Pristina, 04.06.2015. Also see Bieber (2015:301).

<sup>115</sup> See chapter 6.

<sup>116</sup> The INSPIRE directive defines land use as “Territory characterised according to its current and future functional dimension or socioeconomic purpose (e.g. residential, industrial, commercial, agricultural, forestry, recreational).” (<http://inspire.ec.europa.eu/index.cfm/pageid/2/list/7>) (last checked 13/06/2018).

negotiations,<sup>117</sup> the directive did create a new basis for (future) EU conditionality. Moreover, since 2010, the EU began to “front-load” rule of law promotion in its Enlargement agenda. This meant that the European Commission could demand EU (potential) candidate member states to prioritise establishing a functional judiciary and law enforcement (a “rule of law”) ahead of advancing other agendas (Kmezcic 2016:3–5,13,134), so that other areas of (economic) governance would not be compromised “by corruption” (European Commission 2013c). Whether problems with land governance would also be prioritised and made part of this frontloaded rule of law promotion remained less clear.

### *Modes of assistance*

The third way the leading agenda-setting external actors could potentially affect situations of changing land governance was through different modes of assistance.

Firstly, this could be via technical and financial assistance. E.g. the IRUSP project in Kosovo, a project funded through the Instrument for Pre-Accession (IPA) specifically targeted transparency in land use governance. It had the INSPIRE directive as its legal basis (Posfai 2017). It thus appeared that the EU made the possibility of it funding legislative or infrastructural changes in land registration, use or alienation governance dependent on a link with this part of the acquis.<sup>118</sup> However the EC made clear INSPIRE was mainly meant to facilitate implementation of (EU) environmental policies to ensure spatial data harmonization across member states.<sup>119</sup> In potential candidate states, there was therefore doubt if and when the EU would recognize it had a legal basis and/or funding role to play.<sup>120</sup>

Still it was possible that the EU would permit IPA funds to focus on specific land governance issues. For instance while IRUSP was based on INSPIRE, it clearly focussed on improving

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<sup>117</sup> Of all Western Balkans states, so far only Croatia was required to transpose the INSPIRE Directive prior to accession and to implement an INSPIRE roadmap post-accession (Cetl et al. 2013:8).

<sup>118</sup> In theory, the EU could permit IPA funds with a focus on land governance. The European Commission states it works together with governments to adopt Country Strategy Papers and to identify key sectors, as well as with IPA beneficiaries to negotiate performance indicators for each project. ([http://ec.europa.eu/enlargement/instruments/overview/index\\_en.htm](http://ec.europa.eu/enlargement/instruments/overview/index_en.htm) (last checked 13/06/2018)).

<sup>119</sup> See Interview with Hugo de Groof, DG Environment Governance, Information & Reporting Unit, European Commission in Geospatial Media, ‘Hugo De Groof on success of INSPIRE SDI in Europe’. 31-07-2015, <https://www.youtube.com/watch?v=iBsXzgEERko> (last checked 13/06/2018).

<sup>120</sup> Officers for EU Integration and International Cooperation, MESP (AI.4 and AI.5), Pristina, 18.06.2015.

transparency and accountability in land use governance (Posfai 2017). When asked about in what situations the EU would fund land governance change, an EU official replied that if a project proposal to clarify contested land boundaries (for example) could be linked to EU goals relevant in the (potential) candidate member state (such as rule of law promotion and/or economic/infrastructural development), then it could possibly be eligible for CARDS or IPA funding. Whether it would be made all depended from (local) context to context.<sup>121</sup>

Other donors were less bound by the *acquis* and focussed on specific areas of land governance with technical and financial assistance. More donors began to focus on changing land registration governance across the Western Balkans from the early 2000s, notably the World Bank (Adlington 2010) and GIZ (Specht-Mohl 2015). The EU was on occasion ready to make IPA funding available based on the INSPIRE directive to support other donors' efforts.<sup>122</sup>

To avoid overlap donors and domestic actors institutionalised policy coordination: the EU and the World Bank did so for the whole region in 2000 (Kathuria 2008:xii) and at country level domestic actors and donors set up Land Administration Coordination Bodies (see chapters 3 and 6). Yet often other donors had more leeway compared to the EU: both in terms of not being bound by the *acquis*, and in the sense that they could more easily adjust their technical and financial assistance programmes. This had possible advantages for domestic actors. E.g. USAID was more open to adapt property rights-related projects in the middle of the project compared to the EU, and thus could assist land governance change in multiple areas in Kosovo.<sup>123</sup>

A second mode of assistance was through liberal state-building actors who were embedded in the local institutional framework. Notably these were the OHR and UNSRSG (see above). As they acted as guardians of the implementation of the peace settlements, they could choose to act at any level or

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<sup>121</sup> Interview Kjartan Bjornsson, Former head of Operations, EUOK (NL3), Brussels, 8.1.2016. Also see Bojicic-Dzelilovic, Kostovicova, and Randazzo (2016:11). The European Commission states it works together with governments to adopt Country Strategy Papers and to identify key sectors of interest ([http://ec.europa.eu/enlargement/instruments/overview/index\\_en.htm](http://ec.europa.eu/enlargement/instruments/overview/index_en.htm)) (last checked 13/06/2018).

<sup>122</sup> The EU highlighted the World Bank's role in driving development and improvement of the "land administration system" across the Western Balkans region (Cetl et al. 2013:8–9). It provided support for the effort to link Western Balkan countries' geodetic authorities with European global position systems (GPS/GMES), which was meant to increase local capacities to measure and clarify real estate (World Bank 2011:20).

<sup>123</sup> This was because the EU, e.g. with the IPA funds, had stricter, and longer-term budgets lines. Unidentified contributor (AL3), Pristina, 10.06.2015. See chapter 7 and 8.



area of governance in accordance with their mandate. The EUSRs largely assumed these roles in 2002 and 2008. As mentioned, they held broad mandates to maintain stability, implement the peace settlements and help Bosnia or Kosovo advance on their respective EU accession tracks as it deemed fit (EEAS 2014; Capussela 2015:106; van Willigen 2012). This covered areas of resource governance that seemed unstable and/or promising in terms of economic development.<sup>124</sup> In addition, EUSRs could provide assistance to solve (long-term) land disputes where those existed. The EUSR in Kosovo held several ‘double-hatted functions’ that positioned it to directly negotiate in land disputes. Unlike e.g. the EU’s High Representative on Foreign Affairs and Security Policy or the Council (the EUSR’s Brussels-based superiors), the EUSR could move locally to negotiate between parties down to the level of individual parcels if this was deemed necessary to implement the peace.<sup>125</sup> In addition, the EUSR in Kosovo held authority to appoint a three out of 8 officials responsible for privatization (between 2008 and 2012). He also headed EULEX, the EU’s rule of law mission in Kosovo. This meant that if the EUSR could be informed by its appointees if a prospective privatization deal smelled “fishy”. The EUSR could then use his position at EULEX to block it (by threatening EULEX prosecution).<sup>126</sup> The EUSR also potentially played a role in implementing the restitution processes<sup>127</sup>, and outcomes of negotiations to return Kosovo’s cadastre (EEAS 2014a). The discretionary scope in terms of where the EUSR could engage in changing land governance seemed mainly bound by specific instructions from Brussels.<sup>128</sup> Thus like the non-acquis conditionality, that EUSR’s potential scope for action appeared not just dependent on its mandate(s) but also the time, place and available resources.

A third mode of assistance was monitoring implementation of the acquis as well as non-acquis conditionality in land governance. Where the EU lacked an acquis or concrete standards/conditionality it could (implicitly) refer to e.g. the World Bank with its DBI on property

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<sup>124</sup> Bjornsson (NI.3).

<sup>125</sup> EU Official (AI.6), Pristina: 05.21.2015.

<sup>126</sup> Andrea Capussela (NI.2), Former PAK Board Member / ICO Head of Economics Unit, 2008-2011, 26.01.2016.

<sup>127</sup> EU Official (AI.7), Pristina, 02.06.2015.

<sup>128</sup> EU Official (AI.6).

registration or construction permitting (see above).<sup>129</sup> Otherwise, these liberal state builders seemed depended on a range of domestic and other external actors, including those working on restitution and rule of law promotion, to monitor progress on areas related to land governance.<sup>130</sup>

The above three modes of assistance suggest that leading liberal state-builders possibly had influence on the land governance problems existing at the onset of quadruple transition in the former Yugoslavia. However, much remained unclear.

If liberal state-builders would choose to act and engage those problems, why exactly would they do so, and when, how and to what extent? Which, if any of the three-overarching agendas, *acquis* or non-*acquis* conditionality, technical and financial assistance would it involve? To what extent would they act upon outcomes that structurally contradicted the stated intentions of the overarching agendas, and how? I.e. in situations where access to land rents remained limited to rent-seekers; or where enduring contestation barred private land investors, would they simply monitor such problems, set macro-level (non-*acquis*-based) conditionality, or engage locally with specific modes of assistance that targeted particular problems in land alienation, use or registration governance?

Finally, when would liberal-state-builders not act? Would they consider the potential unintended consequences of intervention? E.g. if there was potential tension between the overarching agendas, such as between privatization and restitution efforts (Katz and Philpott 2006:97), or between promoting privatization/private sector-led development and the rule of law (Bojicic-Dzelilovic 2002:92; cf. second epigraph), would they refrain from action? Or would they first need to become aware of the specific problems before taking action?

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<sup>129</sup> EU official (AI.9), Sarajevo, 25.11.2015.

<sup>130</sup> E.g. for restitution the CRPC, HPD and KPA, and for asset declarations on the Council of Europe (see old ch.2).

## Concluding remarks

This chapter, together with the previous one, set the stage for the case studies. It showed Yugoslav successor states had three problems in common in land governance that contributed to situations of unregulated land access. It firstly suggested that these problems likely affected the incentives of domestic actors to engage or abstain from changing land governance institutions. It showed that each problem evolved from the beginnings of the SFRY period, and that each had worsened and contributed to a state of unregulated land access at the end of conflict in Bosnia and Kosovo. The chapter also identified the problem-solving approaches of leading liberal state-builders that potentially encouraged action on these specific problems in land governance.

It made clear that the problems of unregulated land access already differed across successor states at the outset of peace. For example, in Bosnia, the risk of contestation around the authority to alienate land revolved less around privatization, contested sovereignty and inter-ethnic distrust (like in Kosovo), and more around the fact that the DPA increased the number of actors who could potentially claim authority to enable or restrict land alienation rights and land use.

Given these differences, much remained to be said about how in different cases domestic and external actors would respond to each problem of unregulated access: would domestic and external actors fail to act at the likely cost of exacerbating unregulated land access problems? Or would some actors seek to cooperate to redesign formal institutions governing land to drive institutional changes addressing each of these three problems? If so, what would drive them; how would they drive the change process; and what would the outcome help create: a LAO or OAO, or something in between?

We will return to this explicitly in the conclusions and provide answers to the research questions. The next chapters describe the case studies from Bosnia and Kosovo on the post-war processes of land governance change.

## II

### Bosnia

“Vestiges of the old economic system  
exemplified by...the politically motivated allocation of real estate...  
must be eliminated.”  
(2000)<sup>131</sup>

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<sup>131</sup> Declaration of the Peace Implementation Council, Brussels, 23.05.2000.

# 3

## Harmonizing Bosnian Land Records

“At present, private property is being bought and sold throughout the country. However, the property market lacks safeguards to protect consumers, such as a...market information mechanisms. In [their] absence...there are risks that displaced persons will be exploited by unscrupulous middlemen, or pressured into taking decisions about their property without full knowledge of the situation.”

The Property Law Implementation Plan, October (OSCE et al. 2000:14)

In November 1995, the land records in Bosnia were disordered. Decades of neglect under decentralized socialism had rendered many land records unreliable, empty shells. Now conflict had further distorted, and in some cases destroyed or displaced up to a quarter of these records; records which formally should have provided citizens with official information on the rights and physical boundaries associated with specific land parcels (Horisberger 2004:4 cf. CRPC 2004:Annex.D,1). This situation contributed to unregulated land access and created opportunities to informally reallocate land. Those positioned to benefit included (wartime) elites with preferences to socially engineer post-war ethnic voting blocs (Buyse 2008; Tuathail and Dahlman 2006) and rent-seekers. At this time, reforms seemed unlikely to change the situation, given such vested interests in dysfunctional but manipulatable land registration systems, not to mention the decentralized authority structures put in place by the DPA.

However, twenty years later the World Bank’s Doing Business Index on the ease of registering property indicated the situation had vastly improved (see introduction and appendix 1). Surveys suggested “[i]nformal payments” to expedite processes to obtain basic information about land rights were not needed (any longer). Satisfaction among users of land registration services was rising (FGU 2015:38–40). Evidently, when changes to land rights occurred, the relevant information was

systematically, expediently and accurately recorded. Processes for registering land had been made compatible across the entities, and in compliance with the EU's INSPIRE directive (Cetl et al. 2013:8). Land registration systems managed to record real estate market transactions, the number of which it saw modestly increasing over the years (World Bank 2012a:34,38-40). In short, it appeared information on land rights was increasingly relied upon and accessible in interlinked, digitized and harmonized land records (FGU 2015). This chapter describes this twenty-year-long journey: why and how Bosnia moved from unreliable land records to more harmonized land registration.

### *Land record harmonization disrupted: 1984-1995*

When it became evident that the quality of land records differed across the Grunt and Katastar, Belgrade created the Real Estate Cadastre (REC) law. The aim was to merge the pre-existing land registration systems into an administratively unified and fully computerized one (see chapter 2). This law the geodetic authorities of Socialist Republic of Bosnia and Herzegovina began to implement from 1984. To do so, three major changes needed to put into effect. First, a systematic “new survey” of aerial photographs of the whole Republic’s territory was needed to replace older graphical information (maps) that had relied on outdated technology. Second, all legal information on land rights including those held in the courts, needed to be transferred to municipal cadastral administrations (Prism Research 2005). Finally, land records linked to old and new cadastral surveys needed to be harmonized. This meant comparing and verifying all land records for each parcel before entering these in the single computerized database. This was a slow process, however. Most of the Republic’s cadastral municipalities lacked the resources to computerise records in their area. In fact, just around one in ten municipalities managed to create a unified, computerised database.<sup>132</sup> When the war broke out in April 1992, the software programmers involved in building and operationalizing the REC, fled (CRPC 2004:Annex.D,3,1). That put in limbo the process of

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<sup>132</sup> This included parts of what became Canton Sarajevo (CRPC 2004:Annex.D,3,1).

harmonizing land records by building the REC.

War fragmented land registration authority and made land records more unreliable. The former occurred as the Socialist Republic Bosnia of Herzegovina split into two (three until 1994) warring entities, the Republika Srpska and the Federation of Bosnia-Herzegovina. That meant that cadastral authorities loyal to each entity now had control over land records of the Katastar and REC. As “control of territory was a major [...] rationale for which the war was fought” (Garlick 2000:66-7), belligerents grabbed opportunities to de-facto alter land rights to their advantage. Thus many Bosnians were forced at the point of a gun to relinquish their formal land rights. The Katastar’s lists on possession rights were manipulated. Moreover, many land records were destroyed. Finally, as housing became scarcer (thousands of homes were destroyed (see chapter 2)); and whole areas were lost to landmines) many internally displaced found shelter in abandoned homes. Often these changes occurred without registering them in land records. This ensured that during and after war, de-facto changes to real estate occurred without recording this in land registration systems. (CRPC 2004:Annex.B,D; Garlick 2000:66-7). That meant official information on land rights data became even less reliable and even more disputable: i.e. an empty shell.

### *Toward recognizing part of the problem: the CRPC and restitution: 1995-1999*

The November 1995 Dayton Peace Agreement formally divided the responsibilities of Bosnia-Herzegovina’s Geodetic Authority between sub-state entities: the Republika Srpska (RS) and the Federation of Bosnia-Herzegovina (FBiH). Now the RS Geodetic Authority (RSGA) and the Federal Geodetic Authority (FGU) effectively gained authority to oversee all cadastral data collection within their respective territories. However, the signatories at Dayton were faced with many problems, economic and political. The overarching issue was prioritization. Re-launching the REC-

harmonization process or finding an alternative way to create a systematic recording of land records turned out to be not among their priorities.<sup>133</sup>

Yet the concern for land records did feature in the Dayton Peace Agreement in some way. The signatories committed to clarify the property rights of the displaced and rights concerning abandoned property. The Commission for Real Property Claims of Displaced Persons (CRPC), an independent body, was made responsible to “receive and decide any claims for real property [...] not voluntarily [...] transferred since April 1, 1992” (Dayton 1995:Annex 7,Art.XI). Dayton required the entities to cooperate with the CRPC: in providing access to land records; in making adjustments to laws that barred its restitution effort; and in providing financial, technical and human resource support (Rabenhorst 2000).

However, the CRPC immediately faced difficulties, both practical and political, when it encamped in Sarajevo in March 1996. Practically it had trouble finding the information needed to take decisions on property claims. The CRPC initially asked displaced persons to deliver documents that could back their claims. However, CRPC officials quickly discovered that most claimants were prevented from bringing any records that could prove their land rights when fleeing their homes. They thus began a search for other potential evidence (Garlick 2000:74). Before they received their first batch of cadastral data from the former Republic’s geodetic administration, a year had passed (ibidem:Annex D,5-6). Only then did the officials learn that the quality of available land records widely varied already before the war.<sup>134</sup> This recognition led the CRPC to take two crucial decisions. First, as “proof of ‘lawful possession’ ... was easier to find” it decided to focus on recovering Katastar and REC data to reconstitute possession rights (Buyse 2008:279). This meant that it would basically avoid dealing with the Grunt. Second, in order to search for, verify and process data “defects” and manipulation, the CRPC decided to create its own land record database managed by the Verification and Cadastre Unit

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<sup>133</sup> There is no known evidence that the Dayton signatories planned to clarify land records and to make them more accessible in each entity.

<sup>134</sup> It also discovered that six out of fifty-two cadastral municipalities had records that had been manipulated after the 1<sup>st</sup> of April 1992, the Dayton-agreed cut-off date for eligible property claims. That meant those records could not be used as evidence (CRPC 2004:Annex D,5-6,2,3).



(VCU). The VCU became operational in 1999 and began retrieving and receiving missing cadastral data from towns across the RS and Federation for insertion.<sup>135</sup>

Meanwhile the CRPC had become acutely aware of just how politically sensitive and difficult its work was. To access land records the CRPC depended on cooperation of the entity-level and local authorities to disclose them. It was particularly dependent on local municipalities. It reported good cooperation with some municipalities<sup>136</sup> yet with others, like Banja Luka, it discerned “a pattern of obstruction”. Possession rights to socially-owned apartments were especially sensitive. The capital of the RS shared with the CRPC very little useable evidence on pre-war list of possession rights. Banja Luka’s municipal “representatives” simply stated that “relevant documentation” was destroyed. Also the RSGA was said to have resisted the CRPC’s restitution effort “from the beginning” (CRPC 2004:Annex D,5-6). Moreover, lawmakers in both entities upheld laws that essentially prevented returns and perpetuated political control over abandoned real estate. This in spite of legislators Dayton-imposed obligation to cooperate with the CRPC. In fact, legislative obstruction was believed to have started even before the CRPC had formally established itself (Buyse 2008:313–18). Finally, the entities provided little help in terms of resources. The CRPC had been understaffed since March 1996 (with just 10 officials to deal with thousands of claims<sup>137</sup>) and thus rendered fully dependent on external donor funding (which it remained until the end of its mandate in 2003).<sup>138</sup>

As the VCU came online in 1999, it finally provided the CRPC with infrastructure to overcome practical challenges and expedite the restitution process. Yet domestic actors still sought to control it. A report delivered to the OHR by USAID-paid consultants in January 2000 said as much:

“CRPC decisions...do not necessarily result in eviction of unlawful occupants, in updating the land register or in enabling the decision holder to sell or otherwise dispose of the property. Often they are frustrated by local judges, politicians or other officials whose co-operation is needed ... [this] is exacerbated by a lack of alternative

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<sup>135</sup> The CRPC stated that this required updating the REC software and hiring “a great number of IT experts” to convert this data for the new CRPC software; it evidently did so with support from a “Swedish Cadastre Project” until its mandate ended (CRPC 2004).

<sup>136</sup> It noted “positive cooperation” in e.g. Zvornik (RS), and Sarajevo (Grad (Federation)) (CRPC 2004:Annex D,5-6).

<sup>137</sup> The CRPC received around a quarter million claims regarding around three hundred fifty thousand properties over a period of eight years: many of these claims were based on possession rights (CRPC 2004).

<sup>138</sup> E.g. when the VCU discovered the extent to which municipalities across the country used different land registries with different software to process land record data, the CRPC had to request donor assistance (which it obtained from Sweden’s cadastral authority) (CRPC 2004:Annex D,5-6,2-3).

accommodations for evictees as well as by political considerations.” (Rabenhorst 2000:5)

In other words, the CRPC’s effort to reopen access to land rights to those who had been displaced by conflict, was obstructed by a political desire to limit access to those rights. The CRPC noted that resultantly hundreds of thousands remained displaced and were unable to return home (Rabenhorst 2000:5). Of this also the Peace Implementation Council was informed: the body representing the US, the EU Presidency, the other G7 members, Russia and Turkey, and which through a Steering Board, appointed the High Representative of Bosnia-Herzegovina.

### *Towards recognizing the economic problem & Ashdown’s imposition: 2000-2002*

The PIC grew concerned that restitution, a key Dayton priority, would not be met. In May 2000, the PIC openly accused governing elites of persistently obstructing the restitution effort. Yet it also noted that there was a larger, economic problem: the unwillingness of domestic politicians to relinquish control over valuable economic resources, including real estate with ambiguous or unclear legal status (see epigraph part I). Moreover, the broader international community increasingly noted that the lack of economic reform was economically unsustainable: it kept the private sector small (and burdened by dependency on political ties), and the economy reliant on a donor resource pool that observers anticipated would soon dry out (Hedges 1999).<sup>139</sup> The PIC echoed this prognosis. It warned Bosnian leaders that without economic reforms and addressing chronic rent-seeking their economy would suffer the consequences: a “self-sustainable market-orientated economy cannot be built in an environment where the principles of economic logic are overruled by the objectives of maintaining political control” (PIC 2000). The barriers for private sector actors to obtain basic information about land rights could help explain the paltry levels of domestic and foreign direct investment.<sup>140</sup> Without

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<sup>139</sup> E.g. see IMF (2000) on Bosnia’s lack of economic sustainability. The IMF later showed data that the Bosnian economy was too consumption-driven and dependent on imports, remittances and reconstruction aid (which by 2001 had fallen to 10 per cent of GDP). By the early 2000s, the economy still grew, yet the IMF worried about the lack of private sector development and the local debt burden (IMF 2004:33–34).

<sup>140</sup> The PIC urged “authorities to remove promptly the barriers obstructing the development of the private sector and to establish simplified procedures for foreign and domestic investors “ so to enable “separation of economic and political powers.” (PIC:2000). At the time the IMF reported that between 1996 and 2001, it attracted as little 470 million USD in total, or 166 USD per Bosnian (assuming the total population was around 2.8 million). Kosovo aside, this was the lowest in the region: “per capita foreign investment in Croatia was USD 1,321, in Bulgaria USD 480, and in Romania USD 288. The level of foreign investment in Macedonia and Albania is also high three times higher...In just two years Serbia and Montenegro succeeded in attracting three times as much foreign investment as BiH” (IMF 2004:59).

clear and accessible land records foreign investors could not be sure which parcels were legally secure. The PIC thus singled out the need for economic reforms in land governance: the “[v]estiges of the old economic system exemplified by...the politically motivated allocation of real estate” had to be “eliminated.” (PIC 2000).

In short, the PIC no longer perceived the opaque and unreliable ‘empty shell’ state of land registration as an issue that only obstructed restitution, but also as a broad economic problem. As Dayton’s guardian, the PIC thus demanded that governing elites enact land registration reforms to deal with it. In addition, the international body expected them to adopt complementarily conflict of interest legislation that would help stop “occupation of contested properties by Bosnians prominent in public life”, which it deemed “totally unacceptable.” The PIC aim was therefore to open access to land rents to non-political elites: to create a “single economic space” that levelled real estate markets. This could be realised with the help of “digital and Internet technology capacities.” It explicitly authorized the High Representative to take unilateral action against legislators’ inaction on land governance reform, if “necessary” (PIC 2000).<sup>141</sup>

Next the PIC supported a Property Law Implementation Plan (PLIP) and asked a coalition of restitution-focused international agencies, including the CRPC, to find specific solutions.<sup>142</sup> By then a search for “reforms” that would “achieve a real estate sector that functions on market principles” had already been initiated by OHR-funded private consultants. Their report argued that a “strong...institutional framework” capable of regulating property transactions in a “legal and transparent” was “necessary”. It highlighted that restitution could ultimately “only be achieved by a real estate sector that functions on market principles” (Rabenhorst 2000:3,5). A CRPC report had reached a comparable conclusion: “a fair and equitable environment for real estate transactions should be introduced” that “would assist those who have chosen not to return to find a durable solution” (CRPC 1999:3). I.e. market-based incentives were needed to facilitate returns.

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<sup>141</sup> The PIC had already noted at Bonn that the Dayton Peace Agreement “mandates policies on property that can be best achieved through development of a market-oriented real estate sector. The current property system must be reformed to facilitate those policies through legislative and institutional change, which can be achieved through intervention by the High Representative, if necessary” (PIC 1997 found in Rabenhorst(2003;3)).

<sup>142</sup> Besides the CRPC other contributors were the OHR, UNMiBH, UNHCR and OSCE (OSCE et al. 2000; PIC 2000).

When the PLIP was released in October 2000, it apparently echoed this conclusion, describing the dire state of land records (see epigraph). But it had a specific solution. Bosnia's land registration systems needed to be repaired and modernized "to clarify and strengthen legal property title". This would make it possible to transfer land rights formally, including for "those who choose not to return". Thus land registration systems would become the basis for meeting "the needs of a private market." To realise this outcome, "both legislative reform and considerable technical assistance and international investment" was needed over the "long-term". "International agencies" and their resources were thus needed to "drive this process forward" (OSCE et al. 2000:14-15).

Germany and Sweden were soon found to be willing to provide these resources. Land registration reform thus began with small-scale pilot projects implemented by the German development agency GIZ (a.k.a. GTZ). These projects developed software and professional procedures for land registration and cadastral mapping in three municipalities (Schindler, Schmieder, and Lauert 2006).

As the issue of restitution started falling to the background after 2000, with the CRPC rapidly processing claims (it would close by 2003, with most claims resolved (Buyse 2008:344-45)), the broader, economic problem of a lack of access to reliable land records seemed to grow. When GIZ arrived in 2001 (Schindler et al. 2006), it soon learned that socialist redistribution of land had made land registers "completely obsolete" in terms of conducting formal real estate transactions (GIZ 2010). It discovered the confusion created by having multiple land registration systems existing in parallel, and how the Grunt had generally become considered as an unreliable system over the previous decades.<sup>143</sup> The courts' land registry clerks had often continued update their land (record) books (which contained the legal information on land alienation rights) *manually* (as noted just a few municipalities had the REC and digitalized records). For the average Bosnian this meant that accessing land records was an extremely slow process. GIZ estimated he or she "had to wait up to three years for one single request to be processed". By 2003, it noted, there was a "backlog of 49,000

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<sup>143</sup> GTZ discovered that the Katastar and REC land surveys had used the new survey, which had new parcel numbers. These did not correspond to those in the Grunt's old survey. As a result recent updates to the land records of the Grunt were filled with errors (Specht-Mohl 2015:21).

cases in Sarajevo only” (GIZ 2010). It was thus no surprise that many Bosnians had stopped using the land registration systems to transact their property, which only made land records ever less accurate and representative of the reality of land use (idem). Many coped instead via informal real estate markets (OSCE et al. 2000:14): It was “not uncommon for contractors to finalize contracts on real estate transactions...but never register the contract in the Land Registry.”<sup>144</sup> Yet according to land registration officials, few investors would tolerate such practices and overlook land record opacity.<sup>145</sup> E.g. Volkswagen attempted an investment in Sarajevo’s car parts factory in 1998, but eventually the German car-maker decided to pull out its investment.<sup>146</sup> Allegedly this was because it had only ostensibly secured the alienation rights to the property.

Even as the economic problem of unreliable land records was becoming ever more apparent to the international community, domestic lawmakers stalled land registration reform. GIZ helped the search for a solution. Together with lawyers and geodetic experts from both entities the German agency discussed whether land registration powers should be separated (i.e. with land registries and cadastral offices working apart (as under the Grunt) or centralized under one institution (as under the REC). Lawyers tended to favour the separated system. This would leave more checks and balances, and allow land registry offices in the independent courts to control for the possibility of land record manipulation and rent-seeking. Conversely, cadastral experts tended to favour the REC. That system was said to have greater administrative efficiency and allow for “an integrated solution” to the problems of unreliable land records. While GIZ aided these deliberations on drafting a new law, it claims it did not impose any particular draft law, best practice or standard (Specht-Mohl 2015:23).<sup>147</sup>

There was still no agreement when High Representative Paddy Ashdown arrived in Sarajevo in May 2002. Ashdown almost immediately urged that an agreement on a new land registry law (one in each entity) was needed “to remove barriers to business” and to “restor[e] confidence in ownership

<sup>144</sup> <http://www.iclg.co.uk/practice-areas/real-estate-2016/bosnia-and-herzegovina> (last checked 13/06/2018).

<sup>145</sup> Interview Tamara Travar, Deputy Project Coordinator, Real Estate Registration Project, Republic Authority for geodetic and property affairs of the Republic of Srpska (RSGA) (NI.4), Banja Luka, 4.11.2015.

<sup>146</sup> <http://www.avaz.ba/clanak/152109/vw-se-povlaci-iz-bih?url=clanak/152109/vw-se-povlaci-iz-bih> (last checked 13/06/2018).

<sup>147</sup> No evidence was found of other donors doing so.

and investment” (OHR 2002b:2). The PIC steering board soon made it “legally binding” for “future governments” of the RS and Federation (OHR 2002a) to “enact harmonized land registry laws” and to subsequently “secure technical assistance in training and staffing land registry offices” (OHR 2002b:7,12). Still, the call for land registration reform was ignored. 2002 was a general election year. The elections passed, and by mid-October, Ashdown still saw no sign the reforms would soon be adopted by the domestic legislatures of the RS and FBiH entities. In a letter dated Friday October 18<sup>th</sup> 2002, addressed to the UN Secretary General, Ashdown speculated that the government formation process would be “perhaps lengthy”. He weighed the economic cost of waiting for this political process to end:

“Donor contributions are falling, foreign and domestic debt is increasing, and there is little or no foreign investment to fill the gap. By next Spring, BiH could be in the grip of a severe domestic debt crisis. The country is racing against time...and...still needs...a Law on Land Registry Books.” (OHR 2002a:7,11).

Ashdown calculated that the costs of waiting were too high. He concluded that “*there is no choice* but to increase the pace of economic reform” [emphasis added] (OHR 2002a:7,11). The next Monday, Ashdown wrote to the members of the RS and Federation parliaments. He reminded them that the PIC had twice required that they pass this law in the previous two years. He explained, a final time, that the law was “a necessary precondition [...] for economic development and investment.” Moreover, “any further delay” in adopting the law would “threaten [...] natural persons” property rights. Lawmakers in both entities had failed to act, yet Ashdown would not. He drew on his PIC-granted authority to single-handedly impose the Law On Land Registry in both entities (Gotovuša 2012; OHR 2002c).

### *Towards the institutionalization of land record harmonization: 2002-2011*

Ashdown’s imposition seemed game-changing for three reasons. Firstly, the law on land registry clarified the institutional framework by clearly separating responsibilities for handling survey and land record data. It did so by essentially re-establishing the Grunt: i.e. a dual land registration system would

be the one and only land registration system. That meant, on the one hand, that land registry offices in forty-eight first instance courts across Bosnia, each overseen by a court president, would be responsible for maintaining records on changes to land rights in the land books (Leskovac, Mehmedovic, and Zelic 2012). On the other hand, the geodetic administrations were responsible for maintaining graphical information, including land surveys and maps. These processes were overseen by a director, who turn was supervised and funded by the ministry of justice of each entity. By contrast, the land registry offices were directed by independent court presidents. Only a state-level body oversaw their work<sup>148</sup>: entity governments formally had no control. This was to ensure that updating land records depended on parallel hierarchies within entities.

If the new law was to be institutionalized and land records were to be harmonized *and* remain compatible across the different regions of Bosnia, horizontal cooperation was essential. Due to the law decentralizing land registration authority, the technical task of systemically harmonizing Bosnia's land records (which involved sifting through the records of different land registration systems that the entities inherited) was potentially complicated. However, the extent of decentralization varied across the entities. In the RS and Brcko geodetic administration was more hierarchical as a result of those regions having a more centralized political structure.<sup>149</sup> In the Federation, cantonal ministries of justice and geodetic administrations were funded by and responsible to their cantonal government. Thus, while the RS and Brcko geodetic authorities could work more hierarchically, the Federation's Geodetic Administration (FGU) had to coordinate horizontally to ensure that the land registry law and other standards for spatial data quality would be institutionalized similarly across the cantons.<sup>150</sup>

The new land registry law also required that the entity justice minister and geodetic administration on the one hand, and court presidents and land registry offices on the other, would search for ways to

<sup>148</sup> <http://pravosudje.ba/vstv/faces/vijesti.jsp?id=51991> (last checked 31/08/2016).

<sup>149</sup> In the RS, the Ministry of Justice supervised and funded the entity's Geodetic Administration (the RSGA), which in turn supervised this work in different 'cadastral municipalities'. In Brcko the head of the department of public register partly fulfilled this supervisory function. Interview Belmir Agic, formerly in charge of the Public Register, Brcko government (NL.5), Sarajevo, 10.19.2015.

<sup>150</sup> Interview Tomislav Tomic, Expert Advisor for Cadastral Affairs for the FGU (NL.6), Sarajevo, 10/13/2015. Land registry and cadastral offices at the municipal level carry out the harmonization of data in accordance with their own laws and bylaws. Each one of these parties carry out harmonization independently, without any formal interference from the Federation Geodetic Administration or Ministry of Justice. Geodetic official (AL.10), Sarajevo, 10.14.2015; 1.12.2015.

clarify land records.<sup>151</sup> For basically land records remained in a dire state. Without their willingness to cooperate, land records in courts and geodetic administrations could not be clarified and made compatible. Creating ‘a single economic space’ for real estate in Bosnia would also be difficult. Yet their willingness to cooperate did emerge after the law was imposed in 2002. Court presidents and geodetic administrations invested in building and maintaining positive working relationships. Incrementally, they worked towards fully updated and integrated systems<sup>152</sup>; some court presidents turned out to be particularly strong allies for geodetic administrations in modernizing land registration (such as the court president of Sarajevo Court from 2005 to 2013).<sup>153</sup> Similarly, the entity ministers were politically committed to work towards a fully updated and unified system. Their “leadership, “oversight” and “engagement” were seen to have a strong “motivational effect” to realize the project goals on lower administrative levels. Cooperation between the entity ministers was also considered strong.<sup>154</sup>

The second game-changing effect of Ashdown’s law was that it triggered a continuous stream of donor resources in support of institutionalizing the law and supporting the land record clarification process. Shortly after the law was adopted, GIZ created the so-called Land Administration Project (LAP). LAP was largely financed from Germany (GIZ), Sweden (SIDA), and Austria and implemented by GIZ and the ministries of justice and geodetic administrations of FBiH and RS. This project began with re-educating court land registry clerks and cadastral officials “with the aim of improving [the] efficiency and quality of the provision of services to users”.<sup>155</sup> Also the World Bank joined the land registration reform effort. In 2006, the entities agreed to a 15 million USD concessional loan from the World Bank Land Registration Project (LRP) to improve technical infrastructure for the registration and clarification of land records in cooperation with the LAP (World Bank 2012b).

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<sup>151</sup> Geodetic official (AI.10)

<sup>152</sup> Idem.

<sup>153</sup> Geodetic official (AI.10)

<sup>154</sup> Geodetic official (AI.10)

<sup>155</sup> GIZ built on its experience with the pilot projects in 1999 to 2001, and subsequent stakeholder consultations for the new land registry draft law. With more resources available it could field a much larger, multidisciplinary team of legal, cadastral, IT and public relations experts. SIDA co-financed from 2003; ADA from 2004 (World Bank 2006:19). The total amount funded by LAP was 8.8 for the Federation and 6.2 million USD for RS. The entities themselves provided approximately one million USD respectively. Additional donors paid around 5.2 million euros (FBiH MoJ 2010:25-26).



Both projects, the LAP and LRP took a “pragmatic, incremental, approach”. They supported “software development”, but only by using “small contracts to deliver specific outputs” as needed (ibidem:6). The new land registration infrastructure (meaning new monitoring and evaluation systems, new land recording and geospatial information systems) was installed step-by-step, without overwhelming those who were supposed to use the new systems. At the same time, LAP continued to invest in re-training land registry clerks. After all, many had gone without training for decades.<sup>156</sup>

Within a short amount of time, the outcomes of retraining and installing modern digital infrastructure became visible. From 2007, the number of pending requests dropped (see figure 8). This meant that citizens, banks and notaries needed to spend less time and money to access land record information: if, for instance, one wanted to secure a mortgage.<sup>157</sup> It also meant that the incentives and scope for rent-seeking activity, and to abuse the authority to restrict access to land records, were minimized (e.g. by expediting the registration process in return for informal payments). The donors explained that these outcomes resulted from “good court presidents, managers and staff” responding “positively” to the revolution of their workplace, with “renovations, new equipment, improved software, temporary additional staff and training” being incrementally provided by the LRP and LAP (World Bank 2012b:6). The incremental yet persistent support via LRP and LAP was also considered essential by both the RS and Federation authorities for gradually improving land registration (Specht-Mohl 2015:23).

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<sup>156</sup> From 2003 to 2006, LAP prioritized re-training land clerks. The rebalancing of responsibilities, as well as “decades without a single seminar” meant that too few clerks were trained, tested and licensed to deal with real estate disputes. The LAP thus invested in “on the job training” of 150 existing clerks and 250 new lawyers (Specht-Mohl 2015:2–3).

<sup>157</sup> (GIZ 2011a). Geodetic official (AI.10).

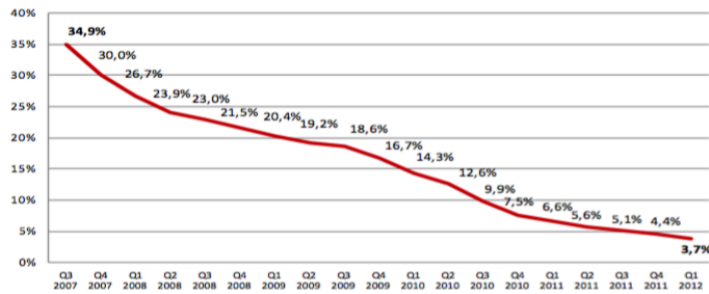


Figure 8: Percentage share of pending requests to access land records in relation to total registration requests received in the FBiH (World Bank 2012b:27)

GIZ invested in informing citizens of the new ease of accessing and using land records. It also funded public outreach campaigns to overcome widely held views that updating or registering land rights was expensive and time-consuming (Schindler et al. 2006:12-13; Specht-Mohl 2015). Thus backlogs of pending requests to access land records continued to drop. The amount of time spent on registering a land right soon fell to twenty-five days. In public surveys satisfaction rose among the primary users of land registration services, namely banks and notaries.<sup>158</sup> Meanwhile, the number registered real estate transactions began to increase, spiking in 2011-12 (figure 9).

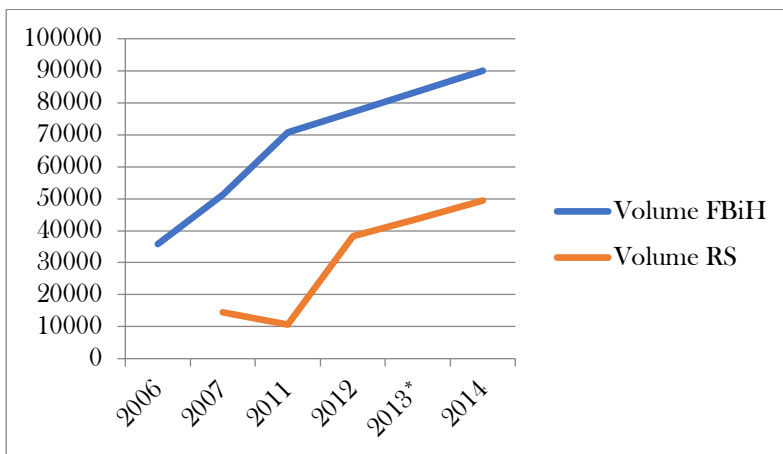


Figure 9: Formal Bosnian real estate transactions (thousands) 2006-2014 (The World Bank 2012, 2016; RS Geodetic authority 2015; author's calculations for year 2013).

<sup>158</sup> The same customer satisfaction surveys (World Bank 2012a) also suggested that more people started seeing the value of clarifying or registering their ownership title. Interview Geodetic official (AI.10).

The third reason why Ashdown's law seemed game-changing is that it seemed to temper the obstructionism of governing elites. They no longer seemed to resist the process of clarifying land records as the entities actively institutionalized the new law with a host of bylaws. This also helped ensure that the land registration systems in terms of content would remain compatible across the entities.<sup>159</sup>

The support of governing elites in both entities for land registration reform contrasted sharply with their attitude toward such reform prior to 2002 (not to mention the long-period of resistance to restitution). It seemed paradoxical. The restoration of the dual land registration system could well permit impersonal access to formal land exchange services. Its institutionalization would create checks and balances as authority over land records was decentralized among cadastral and court authorities (as well as across entities). Thus possibilities for "politically motivated allocation of real estate" (epigraph part I) might well come to diminish.<sup>160</sup>

However, land registration reforms alone would not prevent real estate transactions no longer being politically facilitated. For while land registration services became more impersonal and accessible, the allocation of construction permits, for example, evidently continued to be a slow, convoluted process that often-required political facilitation<sup>161</sup>. One of the World Bank reports had no illusions that the progress made on land registration reform widely opened access to land rents. It noted (in 2012) that "the entities" still needed

"to work to reduce market distortions, encourage greater investment and growth by improving the quality of the data held in the registers, harmoniz[ing] the entries and address[ing] the problems of illegal construction and idle land. Illegal properties are still not selling as they cannot be easily registered in the land book due to missing construction permit[s]" (World Bank, 2012:36)

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<sup>159</sup> The Federation adopted (inter alia) the law on cadastre and the law on real rights. <http://www.klix.ba/vijesti/bih/registracija-zemljista-u-fbih-za-uredjenje-imovinskopravnih-odnosa/100916077> (last checked 13/6/2018). Also the RS introduced a host of new, but harmonized bylaws and amendments were adopted by both entities following the imposition of Ashdown's law; including amendments to "the Law on Land Registry Books, the Law on Court Fees, the Law on Notaries, the Law on Survey and Real Property Cadastre, as well as a law on Law on Real Property Rights" (2008). Nikola Panic, Head of the Department of Land Registry Administration, Ministry of Justice of Republika Srpska (GIZ 2011b). Nota bene: the legal framework across the entities remained distinct. Email exchange with Geodetic official (AI.10) 20.02.2017.

<sup>160</sup> Having clear land records might even help substantiate allegations that governing elites continued to maintain an (illegal) hold on the property of the displaced in the period following the war. See the last footnote of this chapter.

<sup>161</sup> See chapter 4 and 5. Also see e.g. see Moses (2012).

Nevertheless, the process of clarifying land records enabled formal real estate investment. With more land records reliable, banks and foreign investors more often trusted their accuracy and accepted them as proof of ownership for e.g. mortgages. Soon after the law was adopted in 2002 small real estate ‘booms’ took off (as partly reflected in the graph above)<sup>162</sup>. Bosnia’s first 1,5 billion euro real estate investment opportunity presented itself in 2003 as the European Commission (EC) announced its South-East European transportation artery would run north from the Croatian coast past Sarajevo into the RS toward Croatian Slavonia.<sup>163</sup> Given the route of this highway, named Vc, political and economic elites across the Federation, RS and state-level had an interest in making this opportunity happen (Bačić and Poslončec-Petrić 2013:105). For Vc opened a lucrative font of land rents, notably construction permits and tenders for construction material and public infrastructure contracts, that governing elites in local cantons and municipalities were positioned to award.<sup>164</sup>

Yet governing elites across Bosnia discovered that a central obstacle to making this highway reality was finding willing investors (Jansson 2004). Investors wanted clarification in formal “property relations”, i.e. they complained that opacities in land records remained unresolved (Bačić and Poslončec-Petrić 2013:104–5). Governing elites thus appeared to recognize that the fate of the highway depended on further institutionalizing land registration reform. Indeed, in following years, geodetic officials in both entities explicitly stated that part of the reason to complete updating cadastral and land registry records was to enable the Corridor Vc investment. E.g. the FGU’s Director noted that his administration explicitly prioritized the digitization of land records in areas like corridor Vc (Bačić and Poslončec-Petrić 2013:104–5; FENA 2010).

### *The EU’s supporting role in advancing land registration reform: 2002-2015*

By supporting the highway, the EU supported the land registration effort. Yet this effect was

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<sup>162</sup> This could be explained by the improving mortgage sector. According to the World Bank “[b]y the end of March 2012, a total of 60,349 mortgages were registered in the Electronically Maintained Land Registry. 45.3 percent of these were transferred from the old books, while 46.4 percent were newly submitted and registered requests for registration of mortgages. The remaining 8.3 percent were the mortgages taken over from the Real Estate Cadastre.” (World Bank 2012b:28, 36).

<sup>163</sup> The EC estimated the highway to be around 1.5 billion Euro (European Commission 2003).

<sup>164</sup> Damir Kapidžić Assistant Professor, Faculty of Political Science, University of Sarajevo (NI.13), Sarajevo, 3.11.2015; Interview Mirza Pozder, Professor at Faculty of Engineering, University of Sarajevo (NI.8), Sarajevo, 30.11.2015

(evidently) not intended, and thus indirect assistance for land registration reform.

Implicitly the EU did make references to the need for land registration reform. E.g. in its first progress report it noted that the lack of clarity on land (ownership) rights undermined the potential for developing Bosnian agriculture (European Commission 2005a:52). Later reports suggested that land registration problems affected “free market entry and exit”.<sup>165</sup> Yet these suggestions for reform remained vague, and they were not clearly stated as requirements for accession. It was only in 2008 that the European Partnership Action Plan (EPAP) formally required the entities to “continue” land registration reform.<sup>166</sup> By then the EU had adopted the INSPIRE directive. The EC found that Bosnia-Herzegovina’s geodetic authorities (like counterparts in the region) “were interested in following, dissemination, and use of the results of INSPIRE” (Cetl et al. 2013:8). In fact, the directive appeared to catalyse a domestic effort to make entity laws and land registration systems “INSPIRE-compliant” (Specht-Mohl 2015:23–24). Evidently, this occurred without the EU explicitly stating this was an (immediate) requirement.<sup>167</sup>

What was driving Bosnia towards this ‘premature’ compliance was apparently that harmonizing domestic laws with INSPIRE had the concrete benefit of attracting IPA funds that helped the process of clarifying land records. For instance, in 2007 and 2008 the EC thus funded BiHPOS, which created a sub-branch of the Global Satellite System Network (GNSS) in each entity. BiHPOS was fully operationalized by 2012 after further IPA funds paid for large-scale digital orthophotos and a system of global positioning reference stations. This enhanced local capabilities to use GPS and could better inform delineation of parcel boundaries and land rights (Specht-Mohl 2015:25; Bačić and Poslončec-Petrić 2013).<sup>168</sup> But when asked in an interview whether local land registration reform and harmonization was driven by EU conditionality, an FGU official responded:

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<sup>165</sup> In 2006 the EC began and continued using the Bank’s Doing Business Index to measure progress on land registration and noted computerization of the land registry as one of the few reform areas generally where significant improvements were made (European Commission 2006b, 2009a).

<sup>166</sup> The EU noted that completing “a legal framework required for optimal functioning of the land administration” was key. The EPAP provided no further detail on what would make the legal framework “complete” or land administration “optimal” (Department of European Integration 2008). Interviews with Bosnian Officials responsible for European Integration (AI.13), Sarajevo, 2.12.2015.

<sup>167</sup> Interview Tomislav Tomic (NI.6).

<sup>168</sup> Not only surveying techniques were thus improved. The project also helped update older cadastral data and therefore appeared to support the LAP and LRP efforts to harmonize cadastral and land registry data in both entities. In short, it assisted creating more accurate and reliable information on land rights (Specht-Mohl 2015:24).

“we do it because of us, because of (the) citizens. That’s the only reason.”<sup>169</sup>

More specifically, his counterpart in the RS geodetic official suggested that meeting international standards was a secondary aim, and commented that

“...we ourselves expect that [standardizing land registration] will be to our society’s benefit. ... we missed a lot investment because ownership issues were not settled yet.”<sup>170</sup>

In other words, land registration reform was primarily driven (to continue) to attract investors.

### *Challenging and adapting Ashdown’s law on land registry: 2011-2015*

Despite the game changing effects of institutionalizing Ashdown’s law on Land Registry and enabling harmonization, old tensions about the imposed law did not dissipate, and eventually resurfaced.

At first there seemed tensions about the process itself because the entity governments indicated that they wanted more discretion disbursing the financial resources from GIZ’s LAP. Unlike GIZ, the World Bank did directly disburse these to the geodetic authorities. As GIZ was unwilling to change this, it decided to end its involvement in the Bosnian land registration reform by 2011.<sup>171</sup> GIZ’s decision was almost immediately followed by a new five-year loan worth 34 million USD for a Real Estate Registration Project (RERP) that was agreed between the World Bank and the entities.<sup>172</sup>

However, soon after GIZ had gone, the old “frozen conflict” between lawyers and geodetic experts over the separation of responsibilities in land registration resurfaced. Since Ashdown imposed a dual land registration, land registry courts and geodetic administrations depended on each other to update and clarify land records and make necessary changes. Now it appeared that ‘his’ law on land registry had “never achieved full acceptance” in the entities’ geodetic administrations (Specht-Mohl 2015:23). GIZ had sought to build support for Ashdown’s land registry law, and to coordinate with

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<sup>169</sup> Interview Tomislav Tomic (NL6).

<sup>170</sup> Interview Tamara Travar (NL4).

<sup>171</sup> According to GIZ the arrival of the World Bank project made the donor recipients feel “capable of implementing activities without the technical assistance of LAP [GIZ]”. Resultantly, “[t]he LAP was increasingly perceived as a project with the objective of supporting the WB [World Bank] project, which meant that it should only fund the necessary human resources to strengthen their own teams and provide additional financial resources to supplement the WB loan. This approach was not acceptable to the LAP donors, [...] [and] an exit strategy was jointly agreed” (Specht-Mohl, 2015:23).

<sup>172</sup> That project, again with Federation and RS ministries of justice as beneficiaries would seek to sustain and enhance progress with more infrastructural and policy development and seek to harmonise land registries and cadastral records in urban areas (World Bank 2012c:36).

the entities (at the state level) new legislation. Yet, self-admittedly, it failed to do so.<sup>173</sup> Meanwhile the status quo persisted. Certain geodetic officials remained in favour of recentralizing all responsibilities for land registration under the authority of their administration, as would have been the case had the REC been fully institutionalized. They thus sought to move away from the more decentralized dual land registration system (where they shared this authority with the independent court presidents). Yet according to GIZ, the status quo began to break with “the advent of additional donors who promoted the unification of the cadaster and land registry under one authority” (Specht-Mohl 2015:23). The World Bank implied that GIZ’s second (2006-11) project had had “difficult functioning” because it failed to adapt even “as the political economy in BiH changed to emphasize more the Entity level authority” (World Bank 2012a:7).

Very soon after GIZ left, in February 2011 (and the era of Ashdown and OHR interventionism long gone (in 2006– see previous chapter), the RS parliamentary assembly adopted a new Law on Cadastre which re-unified the previously separated cadastre and land registry under RS’ geodetic authority (RSGA). Thus, the land records in the RS were to be moved from the jurisdiction of the court presidents to the RSGA. An official at the RSGA argued centralization would expedite harmonization of the cadastral and land record data.<sup>174</sup> Yet for GIZ, the RS law “could be considered a major setback for the efforts undertaken by the LAP” (Specht-Mohl 2015:23). GIZ reasoned as follows:

“[While] choosing between a ‘dual’ or ‘single’ administrative solution for managing the land registry and cadaster is not important, *a clear separation* and the *strong coordination of legal and geodetic functions* is in any case ‘a must’” (Specht-Mohl, 2015:27)[emphases added].

Neither the World Bank, as the main donor who continued to support land registration reform, nor other members of the international community evidently took GIZ’s position. However, the leader of the Bosniac caucus in the RS parliamentary assembly (Daily 2011) and Bakir Izetbegovic, the Bosniac

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<sup>173</sup> A designated state-level coordination body (the Land Administration Coordination and Advisory Board (LACAB) had failed to live up to its task of proposing “appropriate” measures to improve the land registration system: (Specht-Mohl, 2015:24-6). See next chapter

<sup>174</sup> Interview Tamara Travar (NI.4).

President, suspected the centralized system could be abused. Once again, elites might be able to make politically-motivated reallocations of real estate by manipulating land records related to properties abandoned by the displaced. It was not just that the new law would give the RSGA more authority to regulate access to information about land rights within its jurisdiction. Without the countervailing power built into the land registration system, i.e. appropriate checks and balances, outdated land records might be harmonized or manipulated without proper due process. For example, by changing land ownership titles without consultation of absentee owners who might someday return to formally clarify their ownership rights and/or return to their property. Izetbegovic thus challenged the law in the constitutional court. This eventually brought RS government to amend the law (Constitutional Court BiH 2012).

However, land registration authority remained centralized in the RS. Moreover, the idea to centralize spread to the FGU: like the RSGA, the FGU held that the unification of the cadastre and land registries would make it “easier” for citizens to access data. It would also be “cost-efficient” to harmonize and collect real estate data. Moreover, World Bank-funded surveys showed notaries and surveyors were (still) complaining about the efficiency of the Federation’s property registration system.<sup>175</sup> At a World Bank conference in 2016, the Directors of both entities’ Geodetic Authorities jointly stated that “the transition of the dual registration system into a single, unified one is internationally recognized as a best practice” to enable harmonization (Obradović et al. 2016).

However, donors who have continued to support Bosnian land registration reform have formally remained silent about the issue of centralizing land registration authority under entity governments.<sup>176</sup> The EU simply continued to insist on harmonization of land registration systems to allow for more (agricultural) investment and land consolidation in its annual (progress) reports (Obradović et al.

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<sup>175</sup> Interview Geodetic official (AI.10) 1.12.2015.

<sup>176</sup> The World Bank nor the EU has an explicit standard for whether land registration responsibilities should be centralized or separated. An EC official indicated that INSPIRE made only general requirements of member states to establish spatial information infrastructure: it does not stipulate the organizational structure of cadastral agencies. See Interview with Hugo de Groof, DG Environment Governance, Information & Reporting Unit, European Commission with Geospatial Media, ‘Hugo De Groof on success of INSPIRE SDI in Europe’. 31-07-2015, <https://www.youtube.com/watch?v=iBsXzgEERko> (last checked 13/06/2018). However, a World Bank publication noted that in projects similar to the LRP and RERP it “has exhibited [...] the assumption that one uniform set of land laws based on a Western model would facilitate foreign investment in land”. (Deininger et al. 2010:155–56).



2016). Meanwhile, the World Bank worked with the FGU and RSGA to avoid abuse of the harmonization of land records, e.g. to take advantage of unclaimed (absentee) land for political and/or private ends.<sup>177</sup> I.e. to use land records as a rent-seeking device.

It remained to be seen whether harmonization of records would in fact be both expedient and accountable, including in dealing with the plots of land that still had unrecognized owners or unclarified land rights. Yet two decades since the beginning of quadruple transition, there no (longer) appeared to be an interest or a reason to challenge, discuss or test the procedures for data harmonization that had come to exist because of the institutionalization of land registration reforms.<sup>178</sup> Meanwhile, the directors of the geodetic authorities of both the RS and Federation continued to highlight ways how to improve the harmonization of land records. They also continued to “recogniz[e] the significance of land administration for the economic prosperity and development” (Obradović et al. 2016).

## Concluding remarks

This chapter showed that land registration systems were (re)institutionalized iteratively and incrementally. Once reforms began, donors slowly introduced new working methods and technologies to enable land record harmonization. The cooperation between donors and the entity governments continued because the remaining donors adapted when entities sought to recentralize authority over land records.

Yet it took a long time before the process of harmonizing land records really could begin. There were technical obstacles and historical legacies that domestic and external actors had to cope with: namely the existence of multiple, broken systems for recording land information at the outset of peace; the tensions that lingered after the external imposition of dual land registration system; and a tendency to revert to a centralized form of land registration governance.

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<sup>177</sup> Geodetic official (AI.10) 1.12.2015.

<sup>178</sup> Follow-up email exchange with interviewee (AI.10), 20.02.2017.

Political obstruction to land registration reform had existed before 2002. What changed that year was the realization that Bosnia would fare poorly in attracting domestic and foreign land investment without clear and reliable information on land rights. The issue of land record opacity had been first brought to light by the restitution effort. Yet it was only when the economic issue of unreliable land records was recognized that land registration reform received political recognition.

The findings show that the PIC and Ashdown were important in recognizing that the state of land records undermined both restitution and Bosnia's economy. Remarkably, this case study shows that it was not just the donors, but also governing elites that supported the institutionalization of land registration reform from 2002, after having long obstructed such an effort. In fact, they continuously supported the (re)institutionalization of a more functional and impersonal land registration system. This resulted in harmonization and clarification of land records that assisted in making land records more transparent, reliable and accessible. Yet domestic elites appeared to realize that while land registration reforms opened new opportunities for investment by clarifying land rights, it did not necessarily undermine their local abilities to politically facilitate real estate transfers. That land registration reform alone did not affect governing elites control over other land rent distributing mechanisms will be further shown in the next chapters.<sup>179</sup>

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<sup>179</sup> What remains unclear is to what extent the harmonization of land records was contingent on reversing institutional arrangements that, combined with harmonized land records, might make transparent the property interests of governing elites. Since 2010, political elites undermined institutional capacity that was previously used by investigative journalists to clarify their real estate records. This institutional reversal thus made potential conflicts of interests harder to discover (Council of Europe 2008; European Commission 2010a:15). Interview Leila Bicakcic (NL.9), Director of the Centre for Investigative Reporting (CIN), 11.12.2015. Moreover, attempts to link land registration systems with property taxation systems existed, yet remained in their infancy at the time of field research. Interview Anja Zimic (NL.10), Project Director at Lantmäteriet, Sarajevo, 25.11.2015.

## Correcting Land Use Governance in Sarajevo

“Management of space that has been entrusted to local authorities...[It is] incorrectly applied to land use] regulations [through corrections and thus] overrid[es] the interests of the community...We cannot afford...[these] corrections...for the private interests of local oligarchy.”

Nasiha Pozder, municipal councillor, Novo Sarajevo (2015)<sup>180</sup>

“[T]he investments from Arab countries are not enough, and the governing elites know it. That’s why they are doing the reform: because they feel a need to do it. BiH really is in deep trouble in terms of attracting FDI. FDI here really is almost zero. A casual observer of the expensive shops in the malls might think that the Bosnians are very rich. But the malls are built for the same people who built them.”

Interview with international official, Sarajevo 2015<sup>181</sup>

The future of land use regulation in socialist Sarajevo was planned to be for the long-term, systematic and comprehensive. During socialist Yugoslavia, spatial planners had established legally binding plans to regulate urban development in the Bosnian capital. Yet a pre-war risk of illegal construction had been exacerbated after four-years of siege and housing destruction. The formal rules represented in the 1985-2015 urban plan, which had represented the Yugoslav planners’ vision, decreasingly bore resemblance to the rules-in-use governing construction in Sarajevo after the siege ended in 1996.

By 2015, a new urban plan was still not introduced and construction permitting remained slow according to the DBI measurement for Sarajevo.<sup>182</sup> Change seemed limited in land use governance, barring incidental, sporadic and localized changes to land use regulations, also known as “corrections” that allegedly served the interests of a “local oligarchy” (see epigraph). Sarajevo still had an illegal construction problem, although occasional legalizations appeared sufficient to maintain the status quo. Areas of unregulated land use remained, making further encroachment a likelihood. Politics

<sup>180</sup> (Nasa Stranka 2015).

<sup>181</sup> International official (AI.18). Sarajevo 25.11.2015.

<sup>182</sup> See introduction and appendix 1.

appeared to have become a struggle about who was positioned to make incidental corrections to land use restrictions, so to enable rent-seeking.<sup>183</sup> However, reform processes seemed to get underway that challenged this status quo in land use governance. These processes were led by different coalitions of actors. Each had a different scope and vision of what that land use governance in Sarajevo ought to be: one focused on expediting construction and opening real estate markets in Sarajevo, the other on controlling incidental corrections of long-term spatial planning rules for sectional interests.

This case study seeks to explain how this outcome at the end of 2015 came about: one where land use politics appeared to mostly revolve around controlling authority to ‘correct’ land use rules, even as two processes to create more impersonal land use governance were emerging.

### *The legacies of land use governance in Sarajevo: 1945-1996*

Sarajevo valley urbanized quickly after the Second World War.<sup>184</sup> To cope with this change, the number of municipal councils with authority to make land use rules increased. This included four urban municipalities (Stari Grad, Centar, Novi Grad and Novo Sarajevo). These were integrated into Sarajevo region with six outlying rural municipalities.<sup>185</sup> These municipal councils could authorise urban plans and permitting decisions. Municipal inspectors bore responsibility for enforcing land use regulations in their municipal jurisdiction (Wastell et al. 2011).

Then there was Sarajevo’s urban planning institute. Its spatial planners drafted land use plans of different scales. The largest scale was the spatial plan for all Sarajevo region. Then there were urban plans for the four urban municipalities and detailed regulatory plans for specific neighbourhoods (idem; cf. UNDEP 2012:95–96). The last spatial plan had been for the period 1985–2015, and had aimed to address Sarajevo’s housing needs over the long-term (Legrand 2013:225). This plan, was meant as a basis for more detailed plans, and a continuing legal reference point for determining land use rules. Under Yugoslav decentralized socialism, the local Communist Party cadre controlled

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<sup>183</sup> Interview independent Bosnian urbanism expert (AI.12), Sarajevo, 20.11.2015.

<sup>184</sup> See table 5.

<sup>185</sup> The mayors of these six outer municipalities had a more discretion in governing land use, and are not the focus of this chapter. However, one of these was Trnovo, which is at the focus of the next chapter.

almost all land use authority, which was vested in the municipal councils, the urban planning institute and the construction institute (which helped regulate city infrastructure).<sup>186</sup>

Nevertheless, the Party had failed to deal with persistent housing shortages. Like other Yugoslav cities, Sarajevo saw encroachment rapidly expand with industrialization (see chapter 2). Entire illegal settlements appeared in areas intentionally left vacant by socialist planners, such as in the city's water protection zones or landslide-prone slopes on the fringes of Sarajevo valley (Wastell et al. 2011).<sup>187</sup> Observers noted (in hindsight) that municipal authorities and inspectors often failed to enforce land use restrictions in these areas because they were unable or unwilling to intervene (Legrand 2013:5). Planners themselves made similar conclusions<sup>188</sup>, and stated their efforts to address the problem had also backfired.<sup>189</sup> By the eighties, approximately forty-thousand illegally constructed houses enveloped the city, covering three-thousand hectares of municipal urban land: land that had been originally designated by the 1985-2015 plan for other purposes.<sup>190</sup> Thus, as housing shortages persisted, so did a lasting risk that illegal construction could exacerbate. The continued existence of illegal construction on Sarajevo's hillsides made it evident that land use rules were not strictly enforced.<sup>191</sup> On the other hand, encroachment restricted space for formally planned city development.

With the first municipal elections in October 1990 land use governance formally democratized. That possibly made decisions about changing land use rules became more complex. The Communist Party lost power, and in any case, there would be no longer any one party controlling the institutional framework for governing land use, but several. Alija Izetbegovic's party, the SDA had won a majority of seats in Stari Grad while its principal rivals the socialist successor parties (one of which would become an important post-war party, the Social Democratic Party (SDP), won in the capital's largest

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<sup>186</sup> Non-institutional actors remained marginal: in socialist Sarajevo, mandated experts interpreted whether changes in land use, such as with land allocations to socially-owned companies, were in line with existing spatial plans. The Communist Party decided; those who challenged its decisions were tolerated (to a point), but ostracized (Garcia and Kotzen 2014:53–57).

<sup>187</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 20.11.2015.

<sup>188</sup> Independent urban planning and urbanism expert (AI.11), Sarajevo, 13.10.2015.

<sup>189</sup> Planners occasionally responded by planning a new neighbourhood yet such plans could backfire: families who were allotted the apartments frequently also kept their illegally constructed homes (Wastell et al. 2011).

<sup>190</sup> The estimate is from the Institute of Architecture, found in Fischer (2004:97).

<sup>191</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 2.12.2015; Independent urban planning and urbanism expert (AI.11), Sarajevo, 13.10.2015.

urban municipality (Novo Sarajevo).<sup>192</sup> An ethno-centric party like the SDA and non-ethno-centric ones like the SDP thus were resigned to share the dispersed authority over land use governance, and to cooperate if they would seek to make changes to land use rules, e.g. to update the spatial plans.

Yet the DPA had also fractured the institutional framework for governing land use in Sarajevo. Most obviously this fracture resulted from the Inter-ethnic Boundary line: this effectively excluded eastern Sarajevo from the city's earlier jurisdiction (it was granted to the RS). In addition, Sarajevo became the capital of the Federation (FBiH), and of Sarajevo Canton (besides continuing to function as the capital of the country as a whole). This meant that the authority and responsibilities over adjusting land use rules now were formally shared between authorities in the Canton Sarajevo and the Federation (Legrand 2013:5). That said, it was the Canton that inherited most of city-level responsibilities and decision-making authority over budget and personnel. It thereby also regulated the competencies and appointments of the directors of the planning and construction institutes (Legrand 2013:5).<sup>193</sup>

Sarajevo's nearly four-year long siege had decimated its population, but also damaged or destroyed significant part of Sarajevo's pre-war housing stock.<sup>194</sup> Soon after conflict thousands of displaced persons would choose Sarajevo as a safe haven. Their numbers would continue to grow (see below). It could therefore appear that the old housing shortage problem was coming back with a vengeance. Interviewed urban planning experts in Sarajevo had already then deemed it sensible to adopt a new urban plan. This could account for the changes in Sarajevo's population and urban area that had transpired since the war began 1992.<sup>195</sup> Further, it could minimize the risk of encroachment, particularly in the city periphery.

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<sup>192</sup> In Stari Grad, the number of votes cast was greater than the total registered voters. In Novi Grad the SDA won thirty-five percent of seats, and in Centar, 30 percent (Nohlen and Stöver 2010:329–30 cf. Udovičić 1998:27).

<sup>193</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 2.12.2015.

<sup>194</sup> According to Mehmed (1999) during Sarajevo's 1992-1996 siege "12000 apartments were lightly damaged, 35,000 heavily damaged, and 24,000 totally destroyed" (from Garcia and Kotzen 2014:19).

<sup>195</sup> Interview independent urban planning and urbanism expert (AI.11), Sarajevo, 13.10.2015.

## *Restitution, but no spatial planning reform in Sarajevo: 1996-2000*

However, in the first four post-war years neither Sarajevo's authorities, nor the signatories of Dayton, were preoccupied with adjusting land use rules so that this could reduce the risk of encroachment.

The general elections in 1996 re-elected Alija Izetbegovic as the Bosniac member of the state-level Presidency, while his party, the SDA, won control of Sarajevo Canton's parliament in a landslide.<sup>196</sup> What had preoccupied both Izetbegovic and the SDA already during the war was the politics of resettling refugees to apartments that had been vacated during the war. At that time, Izetbegovic's government had adopted laws (in areas under Bosniac-control) that vested city officials with broad discretionary authority to redistribute possession rights to vacant flats (Sert 2008). The stated purpose was to create "a pool of flats", i.e. a (rent-)distribution mechanism, that could be used "to house destitute war veterans and their families" (ECHR 2010).

After the war, officials in Sarajevo kept this discretionary authority to reallocate possession rights to vacant apartments. As the SDA was the dominant party in most of the city, there were significant risks that in the absence of strong countervailing power, it could abuse this mechanism to consolidate its hold on power. Liberal state-builders supporting the PLIP (see chapter 3) suspected that the SDA did in fact use this authority to cement ethnic voting blocs (Buyse 2008:323). Others believed the pool of flats simply served as a rent-seeking tool for the SDA. E.g. the son and wartime secretary of Alija Izetbegovic, Bakir Izetbegovic had become responsible to direct the reconstruction effort as the city's director of the construction institute.<sup>197</sup> He allegedly used this position to systematically extract hefty fees in return for granting possession rights to one of Sarajevo's eighty-thousand "public-owned apartments" (Hedges 1999).<sup>198</sup>

That position of land use authority might be systematically abused at expense of implementing the DPA was eventually recognized by Dayton's international signatories. Alija Izetbegovic was also a

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<sup>196</sup> Alija Izetbegovic would win another two terms as Bosniac President and was able to expand his party's dominance at Federation level in addition to near total dominance in Sarajevo Canton, where it won 28 out of 35 seats in 1996.

<sup>197</sup> According to his website: <http://www.bakirizetbegovic.ba/stranica/biografija> (last checked 13/06/2018).

<sup>198</sup> Local sources quoted in the Hedges article made the (unverified) claim that one had to pay as much as 2000 US dollars for an occupancy (possession) right. According to diplomats this contributed to making Bakir Izetbegovic among the "wealthiest and most powerful men in Bosnia" (Hedges 1999). The number of eighty thousand apartments may be inflated as the CRPC found evidence for around twenty thousand restitution cases in Sarajevo (CRPC 2004:D,6).

DPA signatory. Yet he appeared to undermine the CRPC's restitution process by reallocating the possession rights to apartments. A struggle ensued with the PIC and OHR. Ultimately OHR imposed so-called "cessation laws" (in 1998). These voided the decisions taken "since the start of the war" by local land use authorities to reallocate vacant apartments (Buyse 2008:323).

This would help enable restitution. Yet while this happened, unpermitted construction increased. By 2002, the displaced were estimated to count for nearly a fifth of Sarajevo's population, at seventy-two thousand (Fischer 2004:95-96). By then pre-war illegal settlements had expanded on the city's peripheries and open space. Encroachment enveloped land-slide prone slopes, water catchment sites and areas designated for public infrastructure (such as near the airport or Sarajevo's central gas pipeline).<sup>199</sup> According to Fischer, illegal construction constituted the "greatest growth in Sarajevo's housing stocks". She quotes "informed sources" who estimated that about twenty-thousand new structures had been built between 1996 and 2003.<sup>200</sup>

Land use authorities did not appear to be devoid of resources to stem encroachment and meet housing demand. Sarajevo Canton, and Bakir Izetbegovic as head of the Construction Institute, directed (cantonal) funds for reconstruction and new apartment buildings. But by Izetbegovic's own account, their focus was on helping war veterans and invalids.<sup>201</sup> This meant that many individuals could be categorically be excluded from this type of housing. The possibility also remained that the amount of veteran/invalid apartments was too few, or too expensive.<sup>202</sup> Meanwhile, the costs for obtaining a construction permit in an area with a regulatory plan was believed to be too high for many (new) Sarajevans.<sup>203</sup> Despite these constraints, those in need of housing could bet that local authorities

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<sup>199</sup> Fischer (2004:95-96); Canton Sarajevo (2005:66) (found in Legrand (2013:5)).

<sup>200</sup> This estimate comes from Fischer's interviews with municipal mayors and the cantonal ministry for urban planning. Fischer (2004:96).

<sup>201</sup> Izetbegovic writes in his online biography that during his tenure at the construction institute he helped repair "1 million m2 of windows, the reconstruction [of] 1350 destroyed apartments [as well as] the construction of 500 apartments for veterans on Bačićkom Field, [and] veterans' housing and related facilities." <http://www.bakirizetbegovic.ba/stranica/biografija> (last checked 13/06/2018). Sarajevo Canton's Veterans Affairs Ministry (by 1999) managed to muster sufficient resources to provide seven hundred-forty-nine building material packages worth 6000 KM each to veterans, and built nine-hundred-fifty-fifty homes for demobilised soldiers (and invalids) (Fischer 2004:95).

<sup>202</sup> The estimated average monthly income of 300,000 thousand Sarajevans around 1997 was 100 US dollars (Hedges 1997). If it was correct that one had to pay 2000 USD for the right to a reallocated apartment (according to Hedges 1999), the average Sarajevan could not afford this.

<sup>203</sup> Independent urban planning and urbanism expert (AI.11), 13.10.2015.



would (informally) allow “displaced persons...to construct new homes” on vacant “socially owned land”, as others had done in Sarajevo in earlier decades (Fischer 2004:96-98-99).

As an illegal construction boom took off, informal acceptance appeared to be the solution to the housing shortage in post-war Sarajevo. Evidently, for many who lacked a (new) home, the benefits of encroachment exceeded the costs. Local authorities failed to systematically enforce land use restrictions, and thus land use regulations appeared as empty shells. Inspectors and municipal authorities were seen to turn a blind eye<sup>204</sup> or could not credibly carry out the threat of demolition because of local (armed) resistance.<sup>205</sup> Meanwhile, cantonal planning authorities did not adjust land use restrictions to the post-war situation.<sup>206</sup> Interviewees claimed that designing a new urban plan would be “expensive”, and donor programs did not jump in to fill to finance these.<sup>207</sup> Municipalities appeared to be (too) fiscally burdened by the costs of keeping public infrastructure in function; while planners generally lacked information to accurately assess local housing needs, such as current population numbers (Fischer 2004:96-98-99).

This information gap seemed to have deeper causes. Public appreciation of institutions that regulated land use appeared to be low, making it more difficult for officials to secure actionable information to update land use rules. On the other hand, local authorities were said to “impose...[land use]...policy...outside the political process...without the participation of [other] stakeholders” (Fischer 2004:100). Different land use authorities even appeared to exclude each other as potential stakeholders in land use decisions. For instance, the Federation on three separate occasions challenged the Canton’s authority by unilaterally deciding on (three) legalisation waves of Sarajevo’s illegal settlements. This had costs, for evidently the Federation’s decisions to legalise failed to consider the 1985-2015 urban plan (Legrand 2013:9). Thus certain authorities appeared to contribute to make certain land use rules (the urban plan) empty shells.

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<sup>204</sup> Interview independent Bosnian urbanism expert (AI.12), 2.12.2015.

<sup>205</sup> One source claimed it could be “not safe” to enforce land use regulations, as squatters occasionally used arms to threaten inspectors. Interview independent Bosnian urbanism expert (AI.12), 20.11.2015.

<sup>206</sup> E.g. to “enable large-scale housing for displaced persons who [decided] to stay in Sarajevo” (Fischer 2004:95).

<sup>207</sup> Interview independent urban planning and urbanism expert (AI.11), 13.10.2015.

Meanwhile, transnational networks of traffickers in illicit goods seemed to benefit from this weak state of land use governance. U.S. intelligence suspected that with “political protection from the SDA” traffickers became structurally positioned to buy real estate in Sarajevo that they could use as money laundering fronts. In other words, the SDA was believed to abuse its control over (land use) governance in Sarajevo to facilitate rent-seeking, and to enhance traffickers’ “ability to manipulate government institutions, law enforcement and judiciary”.<sup>208</sup>

By 2000 the SDA lost its political pre-eminence in the canton Sarajevo and elsewhere in Bosnia. A coalition of Bosnian nationalists (SBiH) and social-democrats (SDP) was elected to positions of land use authority that had been previously controlled by Alija Izetbegovic’s party, who himself vacated the Bosniac Presidency. While the electorate would return the SDA to government in the canton and at Federation level two years later, it lost the dominant position that it had enjoyed prior to 2001. More than before, authority in land use governance had to be shared with the other parties (Moses 2012:32). At the same time, the spatial planning framework remained incomplete while illegal construction continued as before. However, a (slightly) different status quo and form of land use governance would begin to emerge after 2000.

### *Decreasing external-inducement toward land use reforms: 2000-2014*

When worries mounted in the PIC, OHR and IFIs, about the sustainability of Bosnia’s economy, its FDI record, a possibility emerged that problems in land use governance could also be changed under external inducement. Back in 2000 the PIC urged Bosnian politicians to draw up

“a detailed implementation plan for a real estate market, in the interest of all citizens of BiH and as a core requirement of a market economy” (PIC 2000).

It also called for the elimination of politically motivated reallocation of real estate (epigraph part I). As domestic elites did not respond to this external inducement., Wolfgang Petritsch, the High

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<sup>208</sup>This “political protection” allegedly involved “application of legal provisions to slow down investigations, stalling court procedures, and obstructing enforcement of criminal statutes”. For instance, a conflict network from Kosovo was alleged to be enabled in aggressively buying front companies for its trafficking operations (U.S. Embassy Sarajevo 2006).

Representative before Ashdown, imposed a ban on local governments to “reallotat[e]...state-owned property, including former socially-owned property” (OHR 2002). The ban empowered the OHR with a new position: to authorize their decisions to alienate socially-owned property (Velic 2003). Thus officials like Bakir Izetbegovic, who was still head of the Cantonal Construction Institute at the time, began submitting requests for alienating urban land in Sarajevo for particular investments (OHR 2002).

Still, domestic elites refrained from starting a broad real estate market reform. As noted in the previous chapter, land registration reform had been launched. High Representative Ashdown had eventually become so concerned about the prospects of the economy<sup>209</sup> that he decided to no longer wait on Bosnian leaders to lead reforms in land governance. In 2002, he thus imposed the land registration reforms. Only months later, Ashdown imposed a new construction law in both entities. He used similar reasoning, explaining that he was following up on the PIC’s earlier warnings that “any hesitation” in driving further economic reforms, like this construction reform, could still result in “economic crisis” (PIC 2003).

Specifically, Ashdown’s imposition of the construction law aimed to correct two problems in land use governance. First, it sought to correct problems with institutionalizing the new ban on local governments alienating socially-owned property. The ban turned out to be legally problematic, particularly regarding the alienation of so-called construction land ((socially-owned) land designated for construction). A constitutional court decision had agreed with Petritsch that the exercise of municipal authority to reallocate construction land was incompatible with the workings of a free market economy. Yet it also noted that a corresponding law that explicitly enabled market exchange of construction land was not subsequently adopted. Ashdown’s law had sought to correct this by formally permitting private exchange of construction land (Velic 2003:6–11). However, Ashdown also recognized that the OHR lacked resources to expediently enforce the ban. Petritsch had wanted to avoid “illegal allocations” of state-owned land by vesting the OHR with institutional responsibility and

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<sup>209</sup> In 2000, the IMF expressed worries about the “tax burden” of government and that there was an “urgent” need for “private sector development” (IMF 2000); two years later Ashdown repeated comparable concerns (OHR 2002a).

countervailing power to bar such rent-seeking practices. However, verifying waivers proved to be administratively burdensome (only one person in the OHR was assessing waiver applications (Sert 2008)). Ashdown's law on construction thus returned the right to alienate socially-owned land to local authorities.

After the imposition of the construction law, OHR no longer advocated further reforms that potentially impacted Sarajevo's land use governance.<sup>210</sup> Nor did other donors appear to be ready to follow-up on Ashdown's construction reform. OHR explicitly stated that "preventing illegal construction" was something for municipalities to resolve.<sup>211</sup> In 2005, the EU and Western Balkans countries adopted the Vienna Declaration on informal settlements (chapter 2). Yet no evidence was found that state or local authorities in Sarajevo followed up on this. Nor did the EU specify the need to address illegal construction in its EU Partnership Action Plan priorities or in the progress reports.<sup>212</sup> Nor did it appear to provide resources in support of updating spatial plans.<sup>213</sup>

By the time Ashdown left (in 2006) the PIC did not recommend nor outline a specific follow-up agenda to pursue or deepen land use reforms, let further economic reform. Instead, the EU began to "envisage" closing the OHR and revising the role of the EUSR. Bosnia's leaders were considered to have "overall" demonstrated "readiness to assume ownership and accountability" in further driving reforms (European Commission 2007a).

Among external actors, it was mainly the World Bank that became more involved. When it began monitoring the expediency of the formal construction permitting process in Sarajevo, in 2006, it found it extremely slow. It estimated that the process took on average four-hundred-seventy-eight days and cost twenty-two per cent of the total property value to obtain the permit.<sup>214</sup> The World Bank also became involved in discussing next steps in reforming land (use) governance at the level state and

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<sup>210</sup> This was apart from writing an investor's guide on the construction law written in collaboration with the entity governments (Velic 2003).

<sup>211</sup> The investor's guide to the construction law wrote that "the applicable Law on Spatial Planning and the Law on Construction Land allow and infer an obligation upon the municipality to prevent illegal construction." (OHR 2003b:35).

<sup>212</sup> Interview Bosnian Official responsible for European Integration (AI.13), Sarajevo, 2.12.2015.

<sup>213</sup> However, members of the cantonal planning agency did recognize the necessity of "timely build[ing] capacities for EU funds absorption" (Kurtović et al. 2014:270).

<sup>214</sup> See Appendix 1.

entity level. The World Bank (inter alia) advised Bosnia-Herzegovina to make the following land use governance reforms:

“[1] Increase the efficiency and reduce the costs of systems for issuance of land use and construction permits and update urban planning documentation to reflect the situation on the ground ... [2] [to] [r]egularize illegal developments and encroachments (World Bank 2006:3–4).

These words could have led to action: a Land Administration Coordination and Advisory Board (LACAB) had been set up “by the World Bank” to discuss land governance reforms beyond land registration reform (on which the World Bank focused (see chapter 3)). With the LACAB’s members being appointed at the highest state level (by the Council of Ministers) and with GIZ supporting them to develop strategic guidelines and coordinate with other donors (including the World Bank), the aim was to come up with a “national land policy”. Yet according to GIZ, such guidelines were never developed and LACAB did not coordinate nor launch deeper land governance reforms (Specht-Mohl 2015:26).

### *New status quo (i): partial change & enduring encroachment: 2006-2015*

The LACAB’s failure was mainly attributed to fragmented responsibility and authority over land use. Municipal officials, and officials in the Sarajevo Canton’s ministry for spatial planning, the urban planning institute and the Federation ministry for spatial planning had long lacked a forum to exchange information and express preferences regarding the long-term urban development of Sarajevo (Fischer 2004:98). At the same time, several layers of authority were seen to be involved in approving a new urban plan.<sup>215</sup> When the LACAB was created, the possibility for such exchange was also. Yet it still “failed”, according to GIZ. The German development agency believed this was due to an institutional set-up that vested too many different authorities with powers to change land use rules independently; and that, at the same time, made authorities interdependent. For even if one authority

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<sup>215</sup> The urban plan could not be adopted without the director for the urban planning institute first approving it. The director also had authority to (re)design regulatory plans and to sign corrections (or not). Approval of these plans depended on the minister for spatial planning and the cantonal assembly. Interview independent urban planning and urbanism expert (AI11), 26.11.2015.; interview independent Bosnian urbanism expert (AI12), 2.12.2015.

could propose new rules for governing land use, it depended on others to create by-laws to institutionalise them (e.g. a lower scale plan proposed by one authority depended on a higher scale plan being created by another). This interdependence meant that if one authority proposed to legalise squatting “political blockades” (Specht-Mohl 2015:26) to fully institutionalise such rules were highly probable. Briefly, the risk inherent in this situation was that land use governance would only be partially changed. De-facto, too many authorities had power to countervail and obstruct processes of land use governance change and to mar institutionalisation.

This risk turned out to be real. Given fragmentation and limited coordination, the institutionalization of the few spatial plans that were adopted was hindered. For instance, the Assembly of Canton Sarajevo finally adopted its Cantonal Spatial Plan (for the period 2003-2023) at the end of 2006. It thereby established the basic directions of development in Sarajevo Canton (Canton 2005; Jamakovic 2008:16). Yet its institutionalisation depended, in part, on the Federation adopting a new (larger scale) strategic plan. This strategic plan was never adopted.<sup>216</sup> Besides the cantonal spatial plan, a new (lower-scale) urban plan was needed also. The Canton’s urban planning institute prepared first drafts, yet these were also not adopted. Some stated further information was needed.<sup>217</sup> Population numbers were still missing (the last census was from 1991) and planning authorities were still in an “information vacuum” about the prevalence of illegal construction (which was not registered by the land registration authorities) (Fischer:2004:98-99). Authorities lacked access to modern resources, such as satellite technology, with which they might have systematically mapped the existing problem of illegal construction.<sup>218</sup> Moreover, there is no evidence that donors provided financial resources for updating (or digitizing) the urban plan.<sup>219</sup> Evidently, no efforts were made to make the process of updating cantonal spatial plans more transparent and accessible for citizens, such as via digitization, and to tap

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<sup>216</sup> One senior official from the RS commented that the problem lay with planners at the level of the Federation. He deemed Canton Sarajevo’s urbanism officials “well organized”. By contrast, the RS, with its institutionally more centralized set-up, has been able to update and align spatial plans at entity and local levels. Interview Dragan Jevtic, Assistant Minister for Urbanism, at Ministry of Physical Planning, Civil Engineering and Ecology, Government of the RS (NI.11), Banja Luka, 05.11.2015.

<sup>217</sup> From the public water utility authority. Interview independent urban planning and urbanism expert (AI.11), 26.11.2015.

<sup>218</sup> See chapter 3 cf. chapter 7.

<sup>219</sup> Interview independent urban planning and urbanism expert (AI.11), 26.11.2015

into local knowledge. One senior cantonal land use official interviewee saw no point in doing so, stating that citizens would not be able to understand spatial plans anyway.<sup>220</sup>

While spatial plans only partially changed, illegal construction continued to be a phenomenon in the early 2000s (Herzegovac-Pasic 2015). There had been an increase in formal residential building, but overall the process for obtaining a permit continued to be slow and expensive<sup>221</sup>, so much so that building a house illegally was for many cheaper than going through the formal permitting procedure.<sup>222</sup>

Encroachment remained possible because enforcement remained weak. Though demolitions did occur, legalizations appeared to be much more frequent (see table 6). The cantonal minister for spatial planning in 2006 had announced that a window for legalizing illegally constructed homes would be opened (Canton Sarajevo 2006 cf. Dnevni Avaz 2011). Yet legalization did not mean that the builders would obtain formal ownership rights over their illegally constructed home. Persons could obtain a possession right, lasting unto death, which legally ensured their self-constructed object would not be demolished.<sup>223</sup> Thus legalization was no permanent solution for families living in an illegal built home. However, since applying for legalization was relatively cheap and easy, they often preferred building illegally over the hassle of the formal construction permit application process. Many thus built illegally first and planned to apply for legalization later.<sup>224</sup> The main risk that remained for squatters was of a biophysical nature, namely landslides (Wastell et al. 2011).<sup>225</sup>

As illegal construction continued, legalisation in Sarajevo proved quite ineffective. New legalization decisions followed during the 2000s, with a ‘final’ one being declared in 2012.<sup>226</sup>

Interviewees noted it was no coincidence that these tended to occur during election years.<sup>227</sup> Since

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<sup>220</sup> Interview official responsible for land use regulation (AI.14), Canton Sarajevo, Sarajevo, 20.11.2015.

<sup>221</sup> See appendix 1.

<sup>222</sup> Interview independent urban planning and urbanism expert (AI.11), 13.10.2015.

<sup>223</sup> Official responsible for land use regulation (AI.14), 20.11.2015;

<sup>224</sup> Damir Kapidzic (NI.13).

<sup>225</sup> If illegal construction on Sarajevo's slopes is any evidence, the risk of landslides was long undervalued by many Sarajevans. When Bosnia experienced massive floods and landslides in 2014 squatters appeared to change behaviour. Several were seen to consult planners to verify information about the likelihood of landslides vis-à-vis specific slopes and plots. Apart from safety, their concern may also have been that authorities could exclude them from legalisation if they did build on such plots. Interview independent urban planning and urbanism expert (AI.11), 26.11.2015.

<sup>226</sup> Adoption of legalization decisions requires support of a seven-member Spatial Planning Board, which is composed of six municipal council members and the cantonal minister for spatial planning. Nasiha Pozder (NI.12), 18.05.2016

<sup>227</sup> Damir Kapidzic (NI.13); In 2016, another election year, another legalization wave was called by the Canton's minister for spatial planning and approved by the spatial planning board. Nasiha Pozder (NI.12).

legalization decisions changed land use rules at the plot level, adjustment of the urban plan and other spatial plans was needed. Yet these did not materialise. Piecemeal legalisations therefore effectively contributed to incentivizing further illegal construction and making existing spatial plans more like empty shells.

Table 6: Land use decisions in Canton Sarajevo (Canton Sarajevo 2015).<sup>228</sup>

	2012	2013	2014
New construction permits	481	1070	1220
Legalised buildings	3467	2581	1697
“Illegaled [sic] buildings”	2678	1559	759
Demolished buildings	298	207	234
Total decisions	6924	5417	3910

### *New status quo (ii): Corrections & oligarchic competition: 2000-2012*

Several interviewees believed that these partial changes in land use governance were not simply the outcome of institutional fragmentation, informational vacuums, or piecemeal legalizations. It was also that this status quo enabled rent-seeking. In particular, it empowered those in some positions of authority to make small scale changes that fit specific interests.<sup>229</sup>

The possibility for this institutional manipulation increased after 2002-3, after Ashdown imposed the new land registry and construction law. A new formal construction market emerged: or what some observers called a veritable construction “boom” (Herzegovac-Pasic 2015). The new laws opened access and created strong incentives for banks to finance construction in Sarajevo. Especially larger turnkey projects were attractive: such projects appeared to be able to obtain the requisite permits, making them eligible for bank finance.<sup>230</sup> Although most banks operating in the Federation (and

<sup>228</sup> These statistics may be incorrect. Another document obtained by the author during field work, which put these numbers in percentages, did not square with the absolute numbers mentioned above. When the author asked officials at Sarajevo Canton to clarify, they could not be reached for comment. Earlier numbers were not provided.

<sup>229</sup> Danir Kapidzic (NI.13); Nasiha Pozder (NI.12), Interview independent Bosnian urbanism expert (AI.12), 2.12.2015.

<sup>230</sup> This was confirmed in several interviews with banks. Interview banker 3 (AI.17), Sarajevo Bank, Sarajevo, 1.2.2015. Those individuals with stable incomes (mostly public servants and emigres) were eligible for mortgage loans. Interview banker 2 (AI.16), Sarajevo Bank, Sarajevo, 1.2.2015.



Sarajevo) would continue to have few mortgages in their portfolio<sup>231</sup>, several (of the mostly international) banks saw large potential pay-offs in co-financing several of these turnkey projects. This included the construction of malls along Sarajevo's main-east west corridor and modern residential buildings, many of which were built in the mid-2000s.<sup>232</sup>

Given that the World Bank noted that the construction permitting process remained slow and costly (see appendix 1), this formal construction 'boom' might surprise. Moreover, illegal construction endured, de-facto limiting the amount of available construction land and scope for developers.<sup>233</sup> Also, the lack of new spatial plans limited opportunities for formal construction (Dnevni Avaz 2011).

Nevertheless, governing elites in Sarajevo Canton found ways to circumvent these obstacles to construction. There appeared two key ways.

The first involved an amendment to Sarajevo's spatial planning law which created a possibility to 'correct' land use rules in urban plan or regulatory plans without needing to immediately update those plans entirely. The potential scope for these corrections was broad as the amendment was vague: an "evident lack, incompleteness, or the difference in graphical and textual part of the regulatory plan" would allow the relevant land use rules to be "adjusted".<sup>234</sup> These changes would not require authorisation by a majority in the cantonal assembly, as would be typically the case with adoption of new land use rules. Instead, the signatures of five persons were required to pass a correction, including the city mayor, the minister for spatial planning and director of the planning institute.<sup>235</sup> Together they could pass a 'correction' to existing local land use rules in the name of public interest. While it was possible for local city councillors to raise objections, the period for objections was short.

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<sup>231</sup> One of the smaller banks in Bosnia for instance estimated that the average Bosnian bank's mortgage portfolio was no bigger than 5 per cent in 2015. Interview banker 1 (AI.15), Sarajevo Bank, Sarajevo, 11.30.2015.

<sup>232</sup> This included the main shopping malls in the city centre, namely BBI centre, the Alta Centre and the SCC. Interviews with banker 1 and 2 (AI.15;AI.16).

<sup>233</sup> I.e. land that is regulated by an urban and regulatory plan (Velic 2003).

<sup>234</sup> Article 46 of the Law on Spatial Planning of Sarajevo Canton (CS no. 7/05) also states that "a correction action plan cannot change the basic concept. Correction of the regulatory plan, at the request of the head of municipality...verifies...with the prior written consent of the competent ministries. For municipalities that are within the city...the mayor obtains the written consent of the mayor. The decision on the correction action plan shall be published in the Official Gazette of the Sarajevo Canton." (Pirolić 2009)

<sup>235</sup> Such changes would ultimately need to be recorded in the requisite spatial plan. Official responsible for land use regulation (AI.14). Five signatures are from the mayor of Sarajevo, the municipal mayor, the Canton's ministers of spatial planning, traffic, and the director of the urban planning institute. In the four non-urban municipalities, the mayor of Sarajevo's signature is not required. Nasiha Pozder (NI.12).

Moreover, once a ‘corrections’ procedure had started, it was hard to become informed about it, and to thus mobilise against it.<sup>236</sup>

Corrections became a new *modus operandi* for land use governance. In 2012 alone these adjustments were made thirty times in Centar (the most active and valuable real estate market in urban Sarajevo) and seventeen times in Novo Sarajevo (the most populous municipality).<sup>237</sup> Corrections normally involved incidental changes: e.g. adjusting how many floors could be added to a building in an area that otherwise restricted height. As long as spatial plans (urban and regulatory) were not updated, the excuse to ‘correct’ outdated spatial plans opportunities remained.<sup>238</sup>

For most of the 2000s the final responsibility for adopting a new the urban plan rested with the same planning institute director (Seid Jamakovic) and same minister for spatial planning (Zlatko Petrovic). As long as they stopped adopting a new urban plan, correction procedures could continue to happen. One interviewee thus suspected that “they” (Jamakovic and Petrovic) “were included in every investment in Sarajevo” during this period.<sup>239</sup> I.e., the new law created a new status quo that structurally facilitated rent-seeking.

The limitation of the corrections procedure was that it could not to be used for largest turnkey constructions projects, like malls. These projects required changes to land use rules for whole areas, and formally re-designating land as construction land, which meant that whole regulatory plans needed to be changed.<sup>240</sup> Yet there was a second way with which governing elites could avoid the above-mentioned obstacles and enable formal construction. This involved mobilizing their network.

When in the early 2000s buildable land had become limited. This was partly a result of illegal construction and but also simply a result of Sarajevo valley’s geographic constraints (Herzegovac-Pasic 2015). In the centre only a few vacant spaces, mainly socially-owned land, remained. Yet possibilities

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<sup>236</sup> Nasiha Pozder (NI.12).

<sup>237</sup> In the old town three times and in Novi Grad six times (Trnovo Municipality 2007). The author was unable to acquire data for other years. According to Pozder, it requires political pressure to obtain this data from the relevant authorities. Nasiha Pozder (NI.12).

<sup>238</sup> Interview independent Bosnian urbanism expert (AI.12), 2.12.2015.

<sup>239</sup> Idem.

<sup>240</sup> Damir Kapidzic (NI.13).

to develop such spaces only really increased when the OHR abolished its own control over local decisions to reallocate socially-owned land (in 2003). To capture these opportunities a formal developer would however need a change in the regulatory plan. This meant that typically he or she needed political facilitators. Political facilitators could ensure the loyalty of key decision-makers regarding new land use rules, such as the planning institute director<sup>241</sup> and the cantonal assembly. The most powerful among them could arrange privileged access to not only the different layers of authority that regulated land use in Sarajevo canton, but also to media and foreign capital.

When the formal construction boom started, competition over these highly valued plots of land ensued between such powerful political figures and their parties. This competition was often particularly intense regarding socially-owned plots in the centre of Sarajevo. Critics denounced this competition as “oligarchic” (Nasa Stranka 2015)), as it was just a few wealthy, politically-connected individuals that seemed to vie for controlling access to scarce land rents.

In the capital, oligarchic competition was exemplified by the dynamic between Fahrudin Radoncic and Bakir Izetbegovic, who were said to struggle for “last piece[s] of available real-estate in downtown Sarajevo”. In one notable case, each supported a different investment on the same land, which the socially-owned company (Magros) formally had the exclusion rights to. This parcel lay at Marijin Dvor, adjacent to the state level government and parliament and Sarajevo valley’s main access roads (Moses 2012:79).

Fahrudin Radoncic’s the Montenegrin-born journalist and founder of the post-war *Devni Avaz* newspaper (Bosnia-Herzegovina’s largest daily) expanded his business to construction in 2000. This business eventually built the city’s tallest structure (Hayat 2014). By 2005 he was bidding to secure the exclusion rights held by Magros, but failed (he lost following an appeal to Sarajevo’s privatization agency). Avaz then began a “month long smear campaign” against the successful bidder, a Saudi

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<sup>241</sup> A web search showed Petrovic changed parties three times between 2004 and 2014, evidently changing colours as the dominant coalition partner changed in the cantonal government.

investor (Al Shiddi) who intended to use the Marijin Dvor location to construct Sarajevo City Centre (SCC), a shopping mall (Moses 2012:83).

Bakir Izetbegovic was the public figure backing Al-Shiddi's bid. As member of the SDA board of canton Sarajevo since 1992, director of the construction institute, cantonal assembly member, architect by training and a President's son, he had been able to build a network that included middle-eastern investors. He had also been involved in Sarajevo's reconstruction, including of prominent land marks.<sup>242</sup> In other words, he was strongly positioned to secure political and financial support for a construction projects in city, even after the SDA loss in 2000 and the end of his tenure as Director of the Construction Institute (in 2003).<sup>243</sup>

After winning a bid (in 2005) for part of the land at Marijin Dvor, Al Shiddi and Izetbegovic faced continuing allegations from the Avaz newspaper that the SCC was just a phantom project. Soon complications followed in readjusting the regulatory plan to Al-Shiddi's wishes. The proposed changes in the regulatory plan at Marijin Dvor remained stuck. Evidently well-networked politicians continued to compete for part of the land.<sup>244</sup> Although eventually Al-Shiddi was built, the proposed changes in land use rules at the socially-owned land at Marijin Dvor did not involve any real discussion on whether the project was in line with societal interests.<sup>245</sup>

One observer suggested this was the new status quo. Large-scale construction projects in Canton Sarajevo were said to be "zero-sum games": very rarely did all political parties have a common stake.<sup>246</sup> In other words, narrow sectional interests had come to dominate the politics of changing land use governance. Political facilitation and incidental corrections to regulatory plans (small and large scale) had become the modus vivendi of changing land use rules since the mid-2000s. Before 2012, none of

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<sup>242</sup> See footnote above.

<sup>243</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 2.12.2015. He would enhance his position by joining the SDA presidency, becoming a national MP and an "advisor" to other prominent construction projects (According to his website: <http://www.bakirizetbegovic.ba/stranica/biografija> (last checked 13/06/2018). This included Bosnia Bank International (BBI) Centre, another mall which also served as BBI's headquarters. Also this had been built on socially owned land lying just outside Sarajevo's old town. The project appeared to be funded by actors from Persian Gulf countries, with who the SDA and Izetbegovic had established connections during wartime (Moses 2012:44).

<sup>244</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 2.12.2015.

<sup>245</sup> Local citizens were given the opportunity to comment on the design of the new mall. Interview Damir Kapidzic (NI.13).

<sup>246</sup> Damir Kapidzic (NI.13).

the political parties appeared ready to break this status quo and to move toward a more impersonal form of (changing) land use governance.<sup>247</sup>

### *Correcting Sarajevo's land use governance(?): 2012-5*

In the municipal elections of 2012, a Sarajevo-focused party, Nasa Stranka (NS) had candidates elected to several municipal council seats across the city. Importantly, it was successful in placing one of its councillors in Sarajevo's seven-member board for spatial planning. This gave it a vote and potential countervailing power, on key municipal decisions, like on (future) legalisation waves. This councillor, Nasiha Pozder, was regarded as an expert on the procedures for corrections and changing spatial plans in the city.<sup>248</sup> Moreover, Pozder interpreted the mandate she had received from her voters as a responsibility to control attempts to change land use regulations for sectional interests.<sup>249</sup> To what extent citizens had earlier been ready to vote for this kind of candidate is unclear.<sup>250</sup>

To amplify its countervailing power, NS attempted to mobilise others to become involved in processes where incidental changes are made to land use regulations to serve narrow sectional interests.<sup>251</sup> NS had thus occasionally been able to mobilise countervailing power by organizing collective action against such municipal decisions. For instance, it attempted (but failed) to vote against another wave of legalization (which had seemed primarily motivated to win votes in cantonal elections). It also sought to stop correction procedures (once such a process was launched) by providing information to other city council members (so that they could vote against the decision) and citizens (to raise their concern about the loss of available (green) space in Sarajevo)(Nasa Stranka 2015).<sup>252</sup>

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<sup>247</sup> Nasiha Pozder (NI.12), cf. (Fischer 2004:100).

<sup>248</sup> Nasiha Pozder is professor of architecture and urban planning at the University of Sarajevo, as well as NS vice-president of the party.

<sup>249</sup> Nasiha Pozder (NI.12).

<sup>250</sup> According to Pozder there are no other parties (around 2012) that have a demonstrable record of pushing back against politicized corrections and legalisations.

<sup>251</sup> Nasiha Pozder (NI.12).

<sup>252</sup> Idem.

NS managed to occasionally resist the corrections procedure. E.g. in 2015 the mayor of Novo Sarajevo attempted to use it to build a prominent new high-rise that was to be (partially) financed by a foreign bank.<sup>253</sup> The project was blocked as a result of NS threatening to prevent a vote on the corrections procedure by involving other local council members, and especially by engaging local citizens who had begun to stage protests on the site. They were evidently concerned about a further loss of commonly used land that they considered a “park”.<sup>254</sup> According to an official familiar with this particular correction procedure, the protestors failed to understand the area was not intended as a park, as they were too angry and distrustful of the motives of the cantonal spatial planning ministry.<sup>255</sup> Pozder however capitalized on the instance saying in a press release that: “green space for residents [is lost because] ... none take into account the significant changes in population.” She further implied that her party could resist stopping the corrections procedure from serving “the private interests of the oligarchy” (Nasa Stranka 2015). Similar protests staged by small activist organizations, sometimes in incidental coalitions with Pozder, had also taken place. However, these organisations, while professionalized tended to lack financial and human resources, and/or connections with liberal state-builders.<sup>256</sup>

Meanwhile, the World Bank continued to note the poor performance on construction permitting procedures.<sup>257</sup> This assessment was echoed by a well-established construction company.<sup>258</sup> That said, the World Bank’s persistent criticism of the construction permitting procedure in Sarajevo Canton was not widely known. Neither the head of the Federation’s Chamber of Commerce (which

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<sup>253</sup> Interview banker 3 (AI.15).

<sup>254</sup> The spatial planning ministry highlighted that the land on which Sarajevo tower was to be built was not (formally) a green space. Interview official responsible for land use regulation (AI.14).

<sup>255</sup> Idem.

<sup>256</sup> Based on interviews in Sarajevo with Anes Podić (NI.14), Udruženje Eko-Akcija, 23.10.2015; Rijad Tikvesa (NI.15), Ekotim, 14.11.2015; Borissa Dugandzic Zivanovic, Crvena (NI.16), 17.11.2015.

<sup>257</sup> See Appendix 1.

<sup>258</sup> Email exchange with a representative of ZGP, a seven decades old construction company, Amel Lalicic (NI.18), 30.11.2015. Even though they did not experience “problems” in obtaining construction permits, they expressed a preference for a more expedient process that could better enable them take opportunities on Sarajevo’s the real estate market. Idem.

represented construction companies, nor interviewed officials from canton Sarajevo (who were responsible for the (potential) reformulation construction law) said they had heard of it when asked.<sup>259</sup>

In February 2014 protestors went out on the streets and burned several government buildings, including the main building of Sarajevo Canton. Besides, local authorities, Brussels and Washington, D.C were shocked by this political violence. On the initiative of the EUD a series of forums were organised that Spring in Sarajevo and Banja Luka: the EU, World Bank, EBRD, IFC, IMF and the U.S. led discussions with a selected group of diplomats, NGOs, chambers of commerce, banks and (foreign) investors. The latter included companies with interests in construction. Local activists who had been involved in the protests and were active in monitoring land use regulation transgressions were evidently not part of these discussions.<sup>260</sup>

These forums formally recognized that the protests had resulted from economic dissatisfaction, and that this resulted from limited access to existing and new economic opportunities. A level playing field existed, but it remained skewed toward employees and companies with links to (local) governments (Arapovic and Omerbegovic 2017; O’Callaghan 2017). This diagnosis resulted in a list of economic reforms and recommendations for change across different sectors. These were partly based on improving the business climate and doing business indicators. This Reform Agenda, as it came to be known, was finally adopted at the state and entity levels. It was also recognized by the EU as conditionality.<sup>261</sup> One of the goals that Bosnia was now required to meet if it wanted to accede to the EU, was to “expedite construction permitting” (Council of Ministers 2015).

The EU delegated the task of monitoring progress on this piece of non-acquis conditionality to the International Financial Corporation (IFC). In agreement with the IFC, and with British Embassy funding, the new (SDA) prime minister of Sarajevo Canton committed to reform the relevant laws at

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<sup>259</sup> Official responsible for land use regulation (AI.14); Mirsad Jasarspahic, president of the Foreign Chamber of Commerce of BiH (NI.19), Sarajevo, 20.11.2015.

<sup>260</sup> Borissa Dugandzic Zivanovic (NI.16).

<sup>261</sup> At the end of 2015 the EU Foreign Affairs Council noted that “meaningful progress on the implementation of the agenda for reforms will be necessary for a membership application to be considered by the EU” (Foreign Affairs Council 2015).

the end of 2015 (Guardian 2015). The IFC, did not yet know if and how it would recognize the potential for rent-seeking in the corrections procedure, legalization or in politically-facilitated large-scale construction projects. It would focus on applying best practices and laws existing elsewhere in the country and spent time assessing how they could be applied in Sarajevo's context.<sup>262</sup> Pozder was already contacted by the project.<sup>263</sup>

However, within cantonal bureaucracy officials saw no need for making the process any more expedient than it already was. They argued that if an investor secured the requisite documents, then the final construction permit could be approved within ten days. The officials also saw no problem with the corrections procedure. They mainly saw a risk of rent-seeking if investors were sloppy with their own paperwork.<sup>264</sup>

Questions thus remained if construction permitting reform would take place. The IFIs, EU and the U.S. embassy appeared committed to the Reform Agenda in 2015, and were continuously coordinating and evidently cooperating with Bosnian leaders at the highest levels.<sup>265</sup> Yet these dominant liberal state builders placed no special emphasis on further or more comprehensive real estate sector reform. Interviewees commented that the Reform Agenda's focus on the DBI, and reducing the number of steps or documents required for obtaining a constructing permit did little to "make the process more transparent"<sup>266</sup> or to encourage substantial change and reforms.<sup>267</sup> The EU for its part did not mention the need for construction permitting or deeper land use reform in its progress report as a requirement for accession.<sup>268</sup>

However, others suggested that the economic pressure may be sufficient to drive change. One international official familiar with the Reform Agenda, suggested it was indeed the lack of FDI that

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<sup>262</sup> This included lessons learnt from RS spatial planning and construction laws, and Tuzla's law on legalisation. Interview Senka Eminagic (NI.17), local staff, IFC, Sarajevo, 12.11.2016.

<sup>263</sup> Interview Pozder (NI.12), 18.05.2016

<sup>264</sup> Interview official responsible for land use regulation (AI.14), Canton Sarajevo, Sarajevo, 20.11.2015

<sup>265</sup> Following the adoption of the Reform Agenda, several high-level conferences with entity and state level officials and EU, IMF and US officials in attendance were staged over the course of 2015 and 2016. See. e.g. (FENA 2016).

<sup>266</sup> Damir Kapidzic (NI.13).

<sup>267</sup> Interview Svetlana Cenic, independent consultant (NI.7), Sarajevo, 3.11.2015; Bosnian official (AI.20), Sarajevo, 26.10.2015.

<sup>268</sup> Damir Kapidzic (NI.13).



was truly driving governing elites to back the Reform Agenda (see second epigraph). While Sarajevo saw recent (luxury) real estate investment from the Gulf countries (Galijas 2017), and Bosnia in general had become “a magnet for investment from the United Arab Emirates (UAE)” (Guardian 2015), the contribution of these countries to Bosnia’s overall FDI remained modest compared to western countries (Economist 2016).<sup>269</sup> Banks in Sarajevo confirmed that the construction market, and construction finance market had flattened out.<sup>270</sup>

## Concluding remarks

The case study finds that the legacies of conflict, Yugoslav socialism and democratization left a fragmented institutional framework and illegal construction. These legacies inhibited changing land use rules from the very beginning of Sarajevo’s quadruple transition. They also enabled rent-seeking and unregulated land access. For with a broad range of actors, it was inherently difficult to change land use governance. In particular, up to the late 1990s and beyond, structural changes to land use governance, like reforming different layers of spatial plans, appeared too difficult.

The possibility of reforms emerged around 2000. The PIC and OHR, fearing economic problems, imposed land governance reforms that opened opportunities for formal construction and urban land markets. Their involvement in changing land use governance was brief. No further external inducement –e.g. to make procedures for changing spatial plans more transparent, dealing with enduring encroachment, or adopting a new urban plan– took place. This helped create a new status quo. Governing elites learned and found ways to circumvent the dysfunctional institutional framework for governing land use, which (after 2000) had become subject to party political competition. They engaged in piecemeal legalizations that appeared not intended to solve encroachment, but to be timed just before elections. This seemed to lock-in and further exacerbate illegal construction. Meanwhile parties vied for the few remaining available plots of land and to use

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<sup>269</sup> See second epigraph. Bosnia failed to counteract the dramatic post-2008 collapse and slow recovery of FDI (IMF 2012:27, 2015:8,28), as noted above.

<sup>270</sup> Interviews with banker 1 and 2 (AI.15;AI.16).

incidental “corrections” to change land use regulations, both of which were meant to politically facilitate particular investments tied to sectional interests.

In 2012, a possibility appeared to emerge that this status quo could be challenged. A new party, NS, had candidates elected who, occasionally with local activists, could control the corrections procedures that they believed served to facilitate rent-seeking and the interests of a narrow “local oligarchy”. These incidental coalitions remained small, under-resourced and poorly positioned to change Sarajevo’s fragmented land use governance, however. Economic discontent and protests in 2014 triggered the reinvolved of liberal state-builders in land use governance. Once again the EU, U.S. and IFIs recognized the economic problems in land use governance in Sarajevo. This led to national and cantonal governing elites committing to “expedite” the construction permitting procedure. However, there was no real indication how, if in any way, the inherent risk of rent-seeking in persistent illegal construction, discretionary corrections procedures and politically facilitated investments would be addressed. Thus, apart from getting a general commitment to expedite construction permitting in the Reform Agenda, liberal state-builders remained largely unclear how governing elites would make land use governance in Sarajevo more impersonal and less susceptible to rent-seeking.

# 5

## Alienating Sarajevo's Olympic Mountain

"IBTV...the site of the 1984 Winter Olympics, has tremendous potential as a demonstration of PA [protected area] management with strong ecological, cultural and recreational values."

World Bank (2008:31)

"Some would like a national park, but we really want to make Bjelasnica a real winter resort...[one with] its own [tourist] city"

Ibro Berilo, mayor of Trnovo (2016)<sup>271</sup>

On the 15<sup>th</sup> of October 2015, a property developer from Dubai signed a land deal with the mayor of Trnovo. Trnovo was the smallest and least populated municipality in Sarajevo Canton at the time, but the deal seemed anything but negligible. Via a 99-year lease Trnovo would alienate Precko polje. This sparsely populated mountain pasture south of Sarajevo lay just below the summit of mount Bjelasnica, which was known for ski slopes that had hosted the 1984 Olympic winter games. The lease covered twenty-one football fields. The recipient of the exclusion and management rights was Buroj, a Dubai-based developer with no previous identifiable record of investment in Bosnia or Dubai.<sup>272</sup> The developer would invest 980 million euros over eight years –roughly equal to a sixth of the Bosnia's GDP in 2015 (figure 10)– into a "touristic[sic] city" for two-hundred thousand.

This was remarkable. Sarajevo Canton had seen large real estate investments before<sup>273</sup>, especially from the Gulf region. Yet *Buroj Ozone*, the name of the 'tourist city', promised to surpass all in size: it would be able to house nearly half the population of Sarajevo itself. This deal would be the largest foreign direct investment in post-war Bosnia-Herzegovina. The Economist (2016) thus considered

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<sup>271</sup> Found in Arslanagić (2016).

<sup>272</sup> Details about Buroj are obscure. It became a registered real estate company in Dubai in December 2013. A concrete portfolio of previous projects could not be found online or provided at its offices in Sarajevo.

<sup>273</sup> See previous chapter.

Buroj Ozone, like other recent Gulf investments in Bosnian real estate as “a welcome bright spot”. After all Bosnia was a country where “bureaucracy and political stalemate” normally hindered economic development and open access (idem). Yet how this potential “bright spot” had emerged, and whether, in fact, it was not an dark one, remained unclear.<sup>274</sup> For one, whatever happened to completely different plans that had existed just two years before was unexplained: i.e. plans to make mount Bjelasnica and the other mountains of Igman, Treskavica and Visocica (IBTV) near Precko Polje, a national park. In fact, authority to alienate the land at Bjelansica had been contested, where some wanted to develop, and others to conserve the Olympic mountain.

This chapter investigates the Buroj Ozone land deal as a case study on what drives change in an area where authority to alienate land had been contested. It considers why and how the deal came about by tracing the origins of different efforts by different authorities to alienate land rights so to develop and/or conserve mount Bjelasnica. It describes how these efforts were enabled and stymied; and how finally a process emerged that led to the signing of the land deal; a deal that left many basic but significant questions about it unanswered.

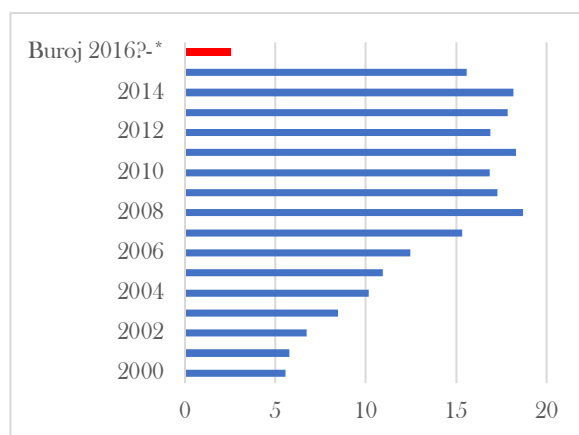


Figure 10: Buroj's promised contribution compared to Bosnia's GDP in nominal in USD (IMF<sup>275</sup>; Arslanagić 2016).

<sup>274</sup> Different figures about the Buroj deal were obscure and appeared to confuse (global) media, including regarding the total amount of land covered in the deal, the number of buildings to be built on it and the amount of money involved. See. e.g. compare (Al-Arabi 2015; Ljubas 2015). The total investment saw the widest differences in figures. The Guardian quoted a figure of 4,5 billion US dollars (Guardian 2015) while the Economist suggested the investment “could come to €2.5bn (\$2.7bn)” (Economist 2016). Buroj mentioned 2,3 billion euros on its website and in the brochure that the author obtained. The mayor of Trnovo remarked on these figures that the media often misquoted him: the investment would be 980 million euros. Interview Ibro Berilo, mayor of Trnovo (NI.20), Trnovo, 26.11.2015.

<sup>275</sup> Based on author's calculation from the IMF (2015) and IMF.org.

## *Origins: developing and conserving Sarajevo's Olympic Mountain: 1978-1997*

Precko polje lies a thousand meters beneath mount Bjelasnica. Today it is a twenty kilometre, thirty-minute drive from Sarajevo airport. Yet in Yugoslav times it was less accessible. There were only gravel roads and entry and management rights were restricted: only loggers of Sarajevo's state-owned logging company, Sarajevo Sume, and those "with a special permission" could enter via a "controlled tollgate" (Alikalfić 2006). Entry rights were expanded to tourists when Bjelasnica was selected to host the 1984 Sarajevo Olympic winter games in 1978. A cemented access road, and ski infrastructure were built at Babin Do, a few hundred meters above Precko Polje, just below Bjelasnica's summit. City planners arranged for expansion of the previously sparse water and sewage infrastructure, as they recognized the area as a primary source of the river Bosna and the capital's water supply.<sup>276</sup>

The socially-owned Olympic Centre, ZOI'84<sup>277</sup> was evidently first to conceive of making Bjelasnica (and Treskavica, the mountain adjacent to Precko Polje's southern rim) a protected area in 1986. Two studies evaluated the idea and its socio-economic implications. They proposed to create a national park. Soon a law to establish the Bjelasnica-Treskavica national park was drafted and forwarded to the Assembly of the Socialist Republic of Bosnia-Herzegovina. However, the draft law was never passed and eventually removed from the legislative agenda. According to Ludimil Alikalfić (an '84 Olympics architect and author of one of the two studies), the wood-processing industry convinced legislators that a national park would cause job losses (idem), apparently out of fear that more restrictive management rights would mean limited access to timber.

However, this legislative failure did not enable industry further. A lack of access to capital aside (see chapter 2), private land development remained restricted with around eighty percent of the land alienation rights in "government ownership".<sup>278</sup> Further, much of area's pastoral and agricultural land was held by private smallholders<sup>279</sup>: that meant any development (including for winter tourism) would

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<sup>276</sup> The Olympics' tourism facilities were small (one hotel was built). With few structures in the area, the risk of contaminating Sarajevo's water supply was expected to be minimal. Interview Anes Podić (NI.14).

<sup>277</sup> Zimskih Olimpijskih Igara: An abbreviation for the Winter Olympic Games 1984.

<sup>278</sup> This is based on a post-war estimate that applies to Bosnia as a whole (World Bank 2008:19).

<sup>279</sup> This estimate is from 2015. At the time, seventy percent of Precko polje was privately used or owned, but not always registered in the land registries. Ibro Berilo (NI.20).

require expropriation and changes to land use restrictions, which was costly.<sup>280</sup> On the other hand, the risk of encroachment appeared low. According to Alikalfic this had little to do with the enforcement capacity of the local municipality, Trnovo, and more with the respect for the area's natural qualities by Sarajevans (Alikalfić 2006).

Thus appeared the pre-war status quo. Yet war transformed the situation. Crucially it destroyed mount Bjelasnica's Olympic facilities. Bosnian Serb forces had briefly captured its strategically located summit, but when NATO forced them to leave<sup>281</sup> the former "methodically dynamited" a number of installations, including (evidently) "the eight chair lifts and all the buildings and weekend houses" (Hedges 1997). This crippled possibilities for post-war winter tourism development. ZOI'84, the socially-owned entity that continued to hold management rights to the ski slopes lacked financial resources to repair the infrastructural damage. The SOE had capacity to service eight thousand skiers a day prior to conflict; by 1997, this was five-hundred skiers per day at maximum (one hotel and some ski slopes had reopened). Even possible demand was low: few Sarajevans could afford a six USD day pass with an average monthly salary of one-hundred US dollars (idem).

### *The EU feasibility study: 1998-2003*

This situation reopened opportunities for advocates of a national park. Alikalfic, the '84 Olympics architect, co-organized a scientific assessment of the biodiversity of Bjelasnica and Igman (Alikalfić 2006). Also the European Commission became involved. In 1998 the EC awarded PHARE funds for designing a Feasibility Study for Igman/Bjelasnica National Park to improve the quality of forestry management in Bosnia-Herzegovina (Alikalfić 2006; Ten Brink et al. 2007:67)<sup>282</sup>. An "interdisciplinary team" of Bosnians, including Alikalfic (as the leading spatial planning expert), and

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<sup>280</sup> See chapter 2 and 4.

<sup>281</sup> In 1993, Bosnian Serb forces briefly secured Bjelasnica's summit, putting nearby mount Igman, Sarajevo's wartime lifeline, within striking distance. Under threat of NATO bombardment, they were "coerced" to retreat (Bucknam 2003:83,90-91).

<sup>282</sup> The development contractor Hunting Technical Services was awarded a contract by the European Commission through PHARE funds <http://ec.europa.eu/enlargement/archives/secrecon/bosnia/ec/eun/lanews12.pdf> (last checked 13/06/2018).

three foreign experts would investigate how to establish more nature protected areas in Bosnia. The proposal was to include twelve-hundred square kilometres of forests and mountains, including mount Bjelasnica, in a protected area. It was given the abbreviated name IBTV<sup>283</sup> (figure 11).



Figure 11: Location of the IBTV Forest and Mountain Protected Area (World Bank 2008b:88).

Establishing this ‘national park’ in the IBTV area would be challenging. Canton Sarajevo land use authority was heavily decentralized and dispersed over multiple levels of authority (see previous chapter). The proposed area covered jurisdictions of Sarajevo Canton, and its outer municipalities of Hadzici, Ilidza and Trnovo, each of which had significant competencies over land use regulations.<sup>284</sup> These municipalities were also partly owners of part of the land that was to be protected (World Bank 2008b:12-13), and thus held alienation rights.

<sup>283</sup> “Barudanovic and Abadzic "Valorizacija prirodnih vrijednosti biološko-ekološke raznolikosti Igmana i Bjelašnice" (1999); "Studija izvodljivosti [Feasibility Study] NP Igman/Bjelašnica" (2001). Found in (Alikalić 2006).

<sup>284</sup> Independent Bosnian urbanism expert (AI.12), Sarajevo, 20.11.2015, 2.12.2015.

The EC feasibility study proposed IBTV would be “self-financed” and somehow involve the municipalities in park management. Alikalfic also stated he was not against refurbishing ZOI’84’s ski facilities. However he advocated for an “embargo on the construction [of additional] accommodation in the mountains” (Alikalfić 2006).<sup>285</sup> That implied that local municipalities’ land use authority and alienation rights would be restricted. Regardless, the outcome of this Feasibility Plan, which was completed in 2001, was that its proposals were not included in local, legally binding spatial plans.

### *Ashdown’s role in redeveloping Sarajevo’s Olympic mountain: 2003-2006*

By 2006 Alikalfic recognized that also the second attempt to establish a national park around Bjelasnica had “fallen into the water” (Alikalfić 2006). The official reason given for the lack of follow-up on the Feasibility Study was that the adjustment of the relevant spatial plans was still “awaiting financial support” (Ten Brink et al. 2007:67). Yet the municipality of Trnovo complained that it had “always...been...constrained in its development” on Bjelasnica (Trnovo Municipality 2006), suggesting it had never been a supporter of the Feasibility Plan. Moreover, in May 2003 new actors and interests appeared to have changed the situation in favour of development. EUSR/OHR Ashdown announced that he would become personally involved “in coordinating the future development of Bjelasnica Mountain as a year-round international tourist destination.” (OHR 2003a).

Alikalfic blamed Ashdown for altering the course and momentum of land governance change: from a need to institutionalize rules that could better conserve Bjelasnica, to a need to change rules that could enable and support mass-tourism development on the former Olympic mountain (Alikalfić 2006). Yet according to the OHR, its involvement to developing tourism on Bjelasnica was simply a response to changes in the local political economy. Canton Sarajevo had “already formed a Council which...worked out development proposals” for land on Bjelasnica. Moreover, OHR felt called to

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<sup>285</sup> It is not known to what extent the other team members shared this idea.



“ensur[ing] that the huge economic potential of Bjelasnica and Igman mountains is realised, while preserving the area's ecology” (OHR 2003a).

Three year later, when Ashdown left Bosnia, the mayor of Trnovo awarded him a medal in recognition of his role in making Bjelasnica “the largest construction site in BiH” (Trnovo Municipality 2006). The mayor of the municipality of Trnovo recognized two key contributions that led to this outcome.

First, Ashdown was thanked for opening new possibilities for legal construction and land reallocation, including around mount Bjelasnica; above all, by imposing the construction law (see last subchapter). Indeed, the Canton’s Council for re-developing Bjelasnica is first heard of after this law was adopted. That suggested Ashdown had prompted its creation, even if unintentionally.<sup>286</sup> On the other hand, Ashdown spoke sympathetically about the council’s aims of redeveloping the area for tourism. He considered Bosnia-Herzegovina Europe’s “last great undiscovered tourism destination.”<sup>287</sup> Ashdown’s involvement in promoting Bjelasnica’s redevelopment also fits with the PIC’s agenda to make the real estate sector more accessible to (foreign) investment.<sup>288</sup>

The second contribution for which Ashdown was recognized was his role of “heading” the Bjelasnica Coordination Board (BCB). The BCB, like the Canton’s Council, intended to resolve the complicated “dynamics” of having multiple jurisdictions and authorities with potential countervailing and veto powers to change land use rules and land rights in the area (Trnovo Municipality 2006).<sup>289</sup> The BCB’s eight-members represented these jurisdictions and/or were positioned to attract financial resources for the development. It included the Canton’s Prime Minister, two Federation ministers, Bosnia-Herzegovina’s investment promotion agency (FIPA) and the mayors of Hadzici and Trnovo. Also involved were the director of ZOI’84 (which still held management rights to the ski resort) and the head of the Sarajevo Development Agency (a body which financed [re]construction projects in

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<sup>286</sup> No evidence suggests Ashdown had Bjelasnica on his mind when imposing either the construction (or land registry) laws.

<sup>287</sup> Paddy Ashdown (former High Representative) quoted by Emerging Markets Group (2006), found in Alterural (2009:8).

<sup>288</sup> See the two previous chapters.

<sup>289</sup> According to Alikalfic, Ashdown was probably “instrumental” in enabling Bjelasnica development: including for changing the regulatory plans and “giving the green light” so that “construction companies could start the works” (Alikalfić 2006).

Sarajevo Canton). Ashdown had suggested the BCB's members were to meet every two or three weeks. He stressed however that the board was not to be given independent formal authority over "decisions that should be made by the appropriate, elected authority". The BCB was only to coordinate and review steps that its members took (OHR 2003a). By heading the BCB, Ashdown contended he could "ensure" a kind of development that was not hostile to preserving mountains' natural environment: something similar to "European ski resorts". He wanted "[c]areful and effective investment" that aimed at "fully preserving their natural beauty" but also "could create as many as 5000 new jobs in the Sarajevo region". This is what could make "Bjelasnica and Igman mountains a European tourist attraction and generate considerable resources for the municipalities of Trnovo and Hadzici, the Sarajevo Canton, the Federation of BiH and BiH as a whole" (OHR 2003a). In accordance with this vision, and with support of the Regional Environmental Centre, a "plan" was developed by Trnovo's officials. The plan was to help guide and reconcile the "two extremes, the preservation of natural beauty and economic development" in developing Bjelasnica.<sup>290</sup>

By 2005 several of the war-damaged ski lifts were reconstructed and new hotels and residential complexes arose on the edges of Babin Do.<sup>291</sup> A new regulatory plan for the area had been adopted. According to Alikalfic this had occurred because the proposal was a "fait accompli". Once the canton's urban planning Institute presented the plan at a public hearing, there had been no real possibility to change it: input from the public was effectively excluded (Alikalfić 2006; cf. chapter 4).

By 2006, the mayor of Trnovo declared that "Bjelasnica" had not just become "the largest construction site in BiH" but also "the epicentre of the interests of foreign and local investors, and certainly the brightest point in the future of Bosnia and Herzegovina, because it has no illegal construction" (Trnovo Municipality 2006). Ashdown bid farewell to the BCB and, while thanking the cantonal prime minister and international community for supporting the outcome, he expressed confidence that "Bjelasnica and villages around it would become the best resort in the region" (idem).

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<sup>290</sup> This was a Local Environmental Action Plan (LEAP) (OHR 2003a).

<sup>291</sup> Anes Podic (NL14).

## *Promising and realizing Bjelasnica's development in Trnovo politics: 2003-2008*

In 2003, when Ashdown began heading the BCB, the mayor of Trnovo was Ibro Berilo. Like Ashdown, Berilo claimed to do everything he could to expedite the construction process in Babin Do. He promised that by the autumn of 2004 he would turn the dale into a large building site. Soon the structures that had been ruined by war were replaced and new apartment buildings arose. Still Berilo promised more, announcing to local media he wanted to see more lifts reconstructed and more construction sites (named Bjelasnica 1 and Bjelasnica 2). He even imagined a railway link to connect it all. His vision was not just a European style ski resort that could supersede ZOI'84's pre-war capacity, but that could once again host the Olympic Games. Berilo explained the urgency with which he pursued the project and his future ambitions as follows:

“People from this region, the municipality of Trnovo, are mostly unemployed. This gives us the unique opportunity to employ all its people, to all give them salaries – and ultimately – secure jobs in the facilities that are being built”  
(Ski magazine 2004).

There was more to this than just creating a local environment that was more conducive to land development and job-creation. Mayors of the outlying municipalities of Canton Sarajevo, including Trnovo, had comparatively greater authority over urbanism decisions than the four urban municipalities, as cantonal and federation spatial plans were less detailed in these areas.<sup>292</sup> One interviewee noted that this discretionary authority in the outlying municipalities of Sarajevo facilitated rent-seeking. Their urbanism department officials had more leeway: both in deciding who could access to lucrative land rents to local construction businesses, and in demanding favours in return, like providing support for the mayor's re-election.<sup>293</sup>

The dynamic also seemed possible because there was little oversight by actors that could exercise control and countervailing power over decisions to say, grant construction permits around Bjelasnica. It was not the canton's responsibility to audit the municipal urbanism department's permitting decisions, even if those decisions might well infringe upon spatial plans that the canton is responsible

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<sup>292</sup> Interview independent Bosnian urbanism expert (AI.12), 20.11.2015. See chapter 4.

<sup>293</sup> Idem. According to the interviewee, a mayor of Ilidza, an outlying municipality close to Sarajevo, was seen to be involved in every single real estate transaction within his jurisdiction. Idem.

for. Cantonal officials stated this was a municipal responsibility (unless it was formally a project of cantonal interest).<sup>294</sup> Secondly, law enforcers appeared not to investigate financial and economic crimes related to construction. The state-level law enforcement body, SIPA, confirmed it never investigated cases of money laundering in the construction sector in the Sarajevo area (it also suggested it had sufficient resources to conduct such investigations).<sup>295</sup> Thirdly, the internationals, including the EU, appeared not to play a role in preventing municipal officials from enabling “corruption” and rent-seeking in changing land rights and awarding construction permits.<sup>296</sup>

This structural lack of oversight created a status quo situation where, following elections, winning political parties bargained hard to ensure control over positions that could make or break real estate land developments; especially those that exercised institutional control over construction permits. In turn, construction companies were incentivized to keep close to local authorities (and winning parties) so to avoid the costs and slowness of the permitting process.<sup>297</sup> Trnovo seemed no exception: by promising and/or realizing land developments the mayor could increase the likelihood of (re)election and consolidating his position.<sup>298</sup>

Berilo’s promises were indeed made prior to municipal elections, the first in which mayors would be directly elected (OSCE 2005:1). The question was whether the economic promises would actually aid Berilo in getting sufficient votes from a small population that was spread out over Trnovo’s mountainous terrain and across several dozen hamlets (in 2006 a social survey estimated it at 2500 inhabitants (World Bank 2008b:58)<sup>299</sup>).

In fact, he was ejected from the mayor’s seat by Milarem Ramic (SBIH) (with 681 votes) with the elections in October 2004 (Izborna Komisija 2004). Although Berilo’s promises to attract (more)

<sup>294</sup> Interview official responsible for land use regulation (AI.14), Canton Sarajevo, Sarajevo, 20.11.2015.

<sup>295</sup> Kristina Jozic, spokesperson SIPA, official response to author’s questions dated 29.11.2015 (NI.21), 28.12.2015

<sup>296</sup> Damir Kapidzic (NI.13) suggested that (e.g.) even if the EU talks about corruption, it does so “as if it’s something out there”, without paying sufficient attention to local level construction permitting. Even so, “everyone knows” that “that is where...the actual corruption takes place.”

<sup>297</sup> Damir Kapidzic (NI.13). Kenan Muftic also believed this explained the behavior of Buroj (see below). Interview Kenan Muftic (NI.22), Director, Terra Dinarica, Sarajevo, 16.10.2015.

<sup>298</sup> Damir Kapidzic (NI.13).

<sup>299</sup> The 1991 census estimated Trnovo’s population at 6991.- <http://sarajevski.ba/sarajevo-broj-stanovnika-1991-godine-i-danas/12797> (last checked 13/06/2018).

investment to Bjelasnica did not ultimately pay off, Ramic continued playing the same game. He supported plans of the BCB, just as Berilo had done, for finding an investor for new construction at Babin Do (called sites B1 and B2). He supported calls of others in the Canton for preparing Sarajevo as a host for new Olympic Games and to build a new “tourist city” in the area. Yet investors apparently showed no interest (Alikalfić 2006).

Ramic made new attempts to attract investors to B1 and B2. Yet three international tenders resulted in zero bids (Trnovo Municipality 2007). Although many local factors could explain the lack of foreign investment interest<sup>300</sup>, a report prepared for the Foreign Trade Chamber of Bosnia & Herzegovina in 2007 singled out the structural lack in Bosnia of “a clear tourism policy”, relatively poor transportation links and a low number of tourists compared to neighbouring countries like Croatia and Montenegro. None of this appeared to help sell Bosnia to tourism investors.<sup>301</sup>

With local elections approaching in October 2008, the BCB had hired a consultancy earlier that year to develop a plan that would help resolve the lack of interest in B1 and B2.<sup>302</sup> Its members aimed to attract 207 million euros in investment, of which 135 million was to be put into new hotels and ski lifts from 2010 to 2014 in B1 and B2. Profits were somehow already calculated to be 7,5 million euros by 2014 (Ekipija 2008). Ramic also announced an agreement with Canton Sarajevo (which at the time was led by the SBIH party) to invest some public funds at B1 and B2, e.g. for an Ice Skating rink (FENA 2007).

Berilo (on the SBIH ticket) ended up defeating Ramic (who ran as the candidate for SDA) in the mayoral election for Trnovo. The unusually high turnout suggested to some observers that there had been heavy vote buying on both sides.<sup>303</sup> One report by Deutsche Welle quoted a source that accused

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<sup>300</sup> E.g. Alikalfić (2006) suggested there had been no real assessment of the previous Olympics.

<sup>301</sup> ORGALIS and BCEOM (2007:14) found in Alterural (2009:51).

<sup>302</sup> At this point the BCB included the Ministry of Economy (Canton Sarajevo, Trnovo, Hadzici and Ilidza municipality, as well as ZOI '84, and SERDA. It included the cantonal tourism agency yet evidently excluded the Federation ministries (Ekipija 2008).

<sup>303</sup> Anes Podić (NL14). Berilo won a slight majority of a total 2364 votes cast, with Ramic securing the rest. Berilo secured double the number of votes cast for Ramic in the first mayoral elections held in 2004. In 2008 there was a ninety percent turnout, which was fifty percent above the turnout in Sarajevo itself and 35 percent above the national average (Freedom House 2010:134).

Berilo of buying votes from local farmers with heifers and motocultivators.<sup>304</sup> However, formally, no voting irregularities were reported.<sup>305</sup>

### *A final attempt to establish a national park: 2008-2013*

Berilo might have continued where Ramic had left off: i.e. with attempts at attracting investment to B1 and B2. Yet risks to Bjelasnica's environment were seen to have increased by the end of 2008.

Interviewed NGOs contended that since 2003-4, when Bjelasnica was opened to (possible) investment, the risk of unregulated land access and the actual incidence of illegal construction had increased.<sup>306</sup> When mayor Ramic was confronted with this "danger of development", he downplayed it: "we strictly comply with the regulations. That's why we got no illegal construction."<sup>307</sup> Yet his was a bold claim. The number of regulations now included not just Yugoslav-era land use regulations (at cantonal and municipal level), but also Ashdown's construction laws, and new environmental laws that had been adopted by the Federation of Bosnia-Herzegovina with the support of EU PHARE funds in 2003.<sup>308</sup> Still, Ramic suggested that construction projects abided by these land use and environmental standards and that municipal authorities had the resources to inspect compliance.<sup>309</sup> Sarajevo's water sources might possibly be affected by developments around Igman and Bjelasnica, but Trnovo had the required enforcement capacity to prevent contamination: "we take care of everything. .... We conduct all necessary investigations, in particular geological and geomorphological ones, and nothing is left to chance."<sup>310</sup>

However, activists and NGOs claimed they had a basic way of verifying whether construction and environmental laws were indeed enforced and contamination avoided. Since little to no new sewage

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<sup>304</sup> (Pirolčić 2009). Berilo himself explained his victory by winning the trust of the handful of local Serbs who remained on the Federation side of Trnovo (Trnovo was divided at Dayton by the IEHL) (idem).

<sup>305</sup> Unlike the previous municipal election in 2004, the OSCE was prevented by "budgetary constraints from fielding a standard election observation mission (OSCE 2008a:4).

<sup>306</sup> Anes Podić (NI.14); Kenan Muftić (NI.22).

<sup>307</sup> In an interview, he had suggested that illegal construction existed in other ski areas in Bosnia (e.g. mount Vlasica), but not on Bjelasnica (Trnovo Municipality 2007).

<sup>308</sup> These laws included the Framework Law on Water; Law on Solid Waste Management; the Law on Environmental Protection and the Law on Nature Protection according to 2006 (Bosna-S Co 2006; World Bank 2008).

<sup>309</sup> Interviews with Anes Podić, Udruženje Eko-akcija (NI.14), Sarajevo, 23.10.2015 and Kenan Muftić (NI.22).

<sup>310</sup> Moreover, Ramic said Trnovo had developed a Local Action Environmental Plan (LEAP), and asked BCEOM/Orgalis consultants to develop a concept that "link[ed]...sustainable development and environmental protection." Interview with Ramic in Trnovo Municipality (2007).

and water infrastructure had been developed since the '84 Winter Olympics, any (illegal) structures that were built outside the former Olympic sites would be likely to contaminate Bjelasnica's streams, and beyond, Sarajevo's water sources.<sup>311</sup>

How many in the IBTV area considered this risk posed by possible (illegal) construction is unknown. Yet an early World Bank-funded "Social Beneficiary Survey" conducted in the area estimated that the idea of restricting (illegal) construction was not unpopular: a "majority" of respondents "were in support of controlling construction, and considered that restrictions on natural resource use would *not* have significant economic impact" (World Bank 2014a:15). This survey had been conducted with consent of the state and entity-level authorities. It was part of broader assessment to see whether public support existed for establishing new national parks, including one in the IBTV area.

The World Bank was aware of sensitivities to changing local land use and land rights to protect local biodiversity. It had been involved in the Bosnian forestry sector since 1998 and it was careful in considering how locals weighed the trade-offs of having new rules implemented to conserve local forests and biodiversity, and how they believed this would impact on employment opportunities in construction, agriculture, tourism and forestry. However, the World Bank highlighted that the Survey suggested that fewer than five percent of those living in the IBTV area opposed the idea of a national park (*idem*). The Bank also highlighted that Bosnia had "the highest proportion of threatened plant species of any European country...only 0.55% of the territory was formally protected - the lowest level in Europe - compared to the regional average of 7%" but that at the same time it lacked a law on national parks. Still, the country had a(n) international responsibility to do something about this (Bosnia had signed the UN Convention on Biodiversity Conservation in 2002) (World Bank 2014:1,6).

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<sup>311</sup> Anes Podić (NL14).

Regardless of whether these facts swayed entity and state-level authorities, they agreed to initiate the World Bank's Forest and Mountain Protected Areas Project (FMPAP) in 2008. Its overarching goal was to increase the total number of national parks and protected hectares, especially in the Federation, where no national parks yet existed. FMPAP aimed to make three per cent of Bosnia's total land mass a protected area, and to restrict local land management rights accordingly. FMPAP would conduct capacity building to ensure sound and self-sustainable park management after establishment of these protected areas (PAs) (World Bank 2014:1,15).

The Federation selected IBTV as one of two areas that would secure support of establishing as a national park. According to the World Bank, the choice was based on the fact that this area had "updated" information on its biodiversity; "strong ecological, cultural and recreational values" (including a commitment to "mine-safe tourism" and the Olympic Games reputation). Moreover, the Bank noted that there was "a broad consensus for establishing this area as a national park".<sup>312</sup> The risk of illegal construction was not specifically mentioned.

However, the FMPAP was a politically cautious project. First, it insisted that its (domestic) proponents, mainly the Federation, pay "attention ... to building good working relationships" with "local stakeholders" (World Bank 2008:31). The project team expected Sarajevo Sume, the socially-owned logging company, to resist implementation in particular (ibidem:24). Thus a core benchmark was built into the project's design that a minimum of eighty percent of survey respondents had to support the park's establishment. This level had to be "maintained" throughout the project (World Bank 2014:2). Second FMPAP had a built-in escape clause: if it seemed after the first two years that establishing IBTV was no longer politically feasible, an alternative area could be chosen and supported to become a national park instead of IBTV (World Bank 2008:27).

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<sup>312</sup> The World Bank project appraisal noted that as part of "EU pre-accession capacity building, the EC will complete a preliminary assessment (including an investment and action plan) covering biodiversity and nature protection in July 2008, which FMPAP will take into account" (World Bank 2008b:11,31).



When legislation for the national park was in the process of being drafted, and funds for further consultation and public outreach were being dispensed, new surveys showed that the level of support for IBTV national park was more ambiguous.<sup>313</sup> Moreover, the new legislation on national parks depended on the Federation's parliament passing a Spatial Plan for the period 2008-2028 (which would cover the whole Federation). As the latter did not get passed, neither did the Federation law on the national parks.<sup>314</sup>

Passing these laws was however not the main issue. Federation politicians did pass a decision on the Federal spatial plan and decision to establish the IBTV national park. Yet only then did it appear to dawn on proponents of IBTV that the real challenge was overcoming the resistance and countervailing power of the local municipalities over the project.<sup>315</sup>

For Ibro Berilo fundamentally opposed the idea of IBTV national park. Even more than his predecessor, the re-elected mayor of Trnovo resisted accepting new land rights and constraints on potential development.<sup>316</sup> Berilo said himself that the issue was not about the freedom to enable development per se but who will have right to decide over land rights in the area.<sup>317</sup> Yet a local NGO alleged that he resisted IBTV because he was lobbied by the local construction industry (Podic 2015). Regardless, Berilo challenged the Federation in 2011 in front of the Federation's constitutional court. He did so jointly with the mayor of Hadzici (a neighbouring municipality which would also be included in the IBTV national park). The mayors accused the Federation of not adequately consulting their municipalities in legislating the National Park and the Federation spatial plan. The mayors' constitutionally given rights to alienate land and to change rules governing land use within the boundaries of their municipalities had been infringed by the Federation's decision to authorise these

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<sup>313</sup> Half of the one-hundred-and-fifty individuals surveyed did not know, or did not wish clarify whether they supported the project. World Bank, Appraisal FMPAP (2008:31). In undated survey tables obtained by the author, forty-two percent of respondents noted that they supported it to better protect the region's ecology, and twenty-two percent because of better opportunities for tourism development (World Bank n.d.:68).

<sup>314</sup> This was the proposal for a Federation Spatial Plan 2008-2028 (2008).

<sup>315</sup> A pre-project analysis of stakeholders, which the World Bank outsourced to a local Bosnian consultancy did recognize that the municipalities could play a "critical" role on the eventual outcome of the (IBTV) project. Yet Hadzici and Trnovo municipality were considered to have only "some influence" (2 out of a 5 point score)" (Bosna-S Co 2006:30).

<sup>316</sup> See above and Trnovo Municipality (2006).

<sup>317</sup> Interview Official, Trnovo (AI.1), Trnovo municipality, 26.11.2015.

plans. Not only had the Federation ignored the decentralized system of land governance in Sarajevo Canton (after the DPA), but also the principles of the European Charter on local governance. Additionally, Berilo and the mayor of Hadzici (also) asserted that IBTV national park would reduce employment and growth in the region. The Federation's Constitutional Court agreed. The Federation's legislative attempt to establish IBTV National Park had unlawfully overstepped municipal authority in the area. The Court's decision struck down both of the Federation's decisions in April 2013 (Ustavni sud Federacije BiH 2013).

In reaction, the World Bank only alluded to this decision by recognizing the "controversy" around the establishment of IBTV. It also noted that in "early 2013" the Bank and the client (the state of BiH) had decided to "revise" the original project goals so that FMPAP's remaining funds would be diverted from the effort to establish IBTV toward the effort to establish another national park in the Federation, at Bilindje (see map above).<sup>318</sup> Neither, the Federation nor the World Bank took further efforts to establish IBTV national park, and with that, another (externally-supported) attempt to establish a protected area in the IBTV area had foundered.

Berilo secured re-election in October 2012. As the case was ongoing, Berilo could present himself as a defender of Trnovo's land use authority and land alienation rights within its jurisdiction. According to him, Federation politicians attempted to "stop us from [land] development so that they can take benefits [and rents] for themselves".<sup>319</sup> Yet as Berilo only just managed to secure re-election,<sup>320</sup> he had reason to continue promising and realizing new developments in the future.

### *Buroj strikes a politically facilitated deal: 2014-2015*

In this regard, the mayor of Trnovo seemed to back at square one, however. For despite his

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<sup>318</sup> Bilindje was ultimately established, and with two parks established in the Federation (Una and Bilindje) the Bank and the Federation could state that FMPAP had met its original aims (World Bank 2014:4).

<sup>319</sup> Ibro Berilo (NI.20).

<sup>320</sup> Berilo won with a majority of the 3021 cast votes in the mayoral and local elections of 2012 (under a turnout of eighty nine percent) (this time under an SDP (social-democratic) party ticket (Izborna Komisija 2012). Like the previous election, this outcome was puzzling to some observers and gave some reason to doubt its validity. Anes Podic (NI.14). The census from 2013 showed Trnovo's population stood at a total of 1502 (BiH 2013:46-47).

successful defence of Trnovo municipality's constitutional rights to decide on land alienation and land use patterns, procedures for obtaining construction permits were still slow, and contract enforcement was still believed to be weak.<sup>321</sup> Other observers agreed that these problems held back land investment across the Federation, including in Trnovo.<sup>322</sup> To locally-based international observers the demand for tourism development in Babin Do actually seemed low.<sup>323</sup> Moreover, even if a willing investor was attracted to this business environment, the cooperation of authorities at the cantonal level and the expertise of the Canton's Urban Planning Institute was likely to be essential.<sup>324</sup>

Nevertheless, within the year after the Constitutional Court case was concluded, a real estate developer from Dubai, Ismail Ahmed from Buroj Investments, visited Trnovo as a "tourist". He found in Bjelasnica's shadow Precko Polje, and supposedly exclaimed: "this is paradise" (Ljubas 2015). He decided that the mountain pasture would look even better if it featured a 'tourist city'. Learning that part of Precko Polje was owned by Trnovo's municipality, he contacted Berilo and expressed his interest to develop this large-scale real estate project. Ahmed told Berilo that he "sincerely believe[d] in this because I am convinced that Bosnia is an important global tourist destination that has yet to be discovered" (Guardian 2015). Berilo said he was quickly convinced by Ahmed' case<sup>325</sup>, and soon stated that the Precko Polje area, in terms of planning and physical infrastructure was among best in the region for "not only for an integrated tourist town of Trnovo, but for a city of 200,000 residents."<sup>326</sup> Thus, at least according to Berilo and Ahmed, began their partnership.

Berilo recognized that certain institutional changes had to be made; yet changes that might make land alienation and land use governance more impersonal were not among them. Instead, changes were needed that would fit this particular investor. This included proposing a new regulatory plan for

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<sup>321</sup> See appendix 1.

<sup>322</sup> International official (AI.18) and see previous chapter.

<sup>323</sup> One interviewed EU official noted that nine out of ten of the residential apartments that were built at Babin Do were empty even in winter. Interview EU official (AI.19), Sarajevo, 13.10.2015.

<sup>324</sup> Independent urban planning and urbanism expert (AI.11). 13.10.2015; 26.11.2015.

<sup>325</sup> Ibro Berilo (NI.20).

<sup>326</sup> Author's notes from presentation by Ibro Berilo at Vijecnica Signing event, Sarajevo, 10.15.2015.

Precko Polje so that the land could be designated as construction land, which would allow Trnovo to grant Buroj building permissions. Moreover, since only fifteen per cent of the land was owned by Trnovo, fifteen by Sarajevo canton (under supervision of the ministry of forestry) and seventy percent by a collection of small-scale private land holders, all land had to be consolidated under Trnovo's authority. Once that was done, the relevant management and exclusion rights needed to be transferable to Buroj, for which a new type of contract was required.<sup>327</sup>

To realise these institutional changes Berilo needed political support from key positions in government, most of which were controlled by the SDA. Berilo was a DF member in 2014 (as showed above, he had a record of being flexible about party membership<sup>328</sup>), but he successfully arranged for Ahmed to meet with Bakir Izetbegovic, the Bosniac President and SDA-party leader; and the prime minister of Canton Sarajevo, Elmedin Konakovic (also SDA). According to Trnovo municipality this was a precaution. In case of obstacles to the necessary institutional changes, should they arise, the support of Konakovic and Izetbegovic could help overcome them.<sup>329</sup>

Konakovic, as Sarajevo canton's prime minister, was particularly well positioned to support the Buroj Ozone project. His government coordinated the work of the forestry, spatial planning ministries, and its urban planning institute (which would need to draft the new regulatory plan) and could act as a whip in the cantonal assembly (which would need to pass it).<sup>330</sup> Izetbegovic, neither had an official competence nor responsibility in deciding on land use rules in the Precko Polje area. Yet as SDA party leader, he had influence across the multiple layers of land governance in Sarajevo. Moreover, he had experience with real estate projects involving Gulf-state developers in the capital, and his political support was often seen as decisive in adjusting spatial plans and transferring land rights. Indeed, local observers of Sarajevo's construction market noted that with "big projects [like Buroj], you need to go through political deal-making".<sup>331</sup> Similarly, others noted that "[m]ost of the

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<sup>327</sup> Ibro Berilo (IB.20).

<sup>328</sup> Berilo has repeatedly switched party allegiance. He switched from SBIH to SDP in 2012, tried joining the SBB, and in 2013 switched from the SDP to DF (Slobodna Bosnia 2012). In June 2016 he switched to an SDA / SBB ticket for the upcoming 2016 local elections (coincidentally the two parties that were led by Sarajevo's prominent real estate developers-cum politicians, Izetbegovic and Radonic - see previous chapter), which he won in October 2016 with 1119 votes, or three quarters of the votes cast in Trnovo's mayoral race (Vijesti.ba 2016).

<sup>329</sup> Official (AI.1).

<sup>330</sup> Idem.

<sup>331</sup> Damir Kapidzic, (NI.13).

time there is one person on the top of the hill, like Bakir Izetbegovic [and] if he is not interested, nothing will happen.”<sup>332</sup> This was also affirmed by an official at the Bosnian ministry of foreign affairs: foreign investors need political connections to enable the kind of investment link Buroj. If an investor had a large amount of money, he or she could get around tedious regulations, where a smaller foreign business could not.<sup>333</sup>

Available evidence does suggest this type of political facilitation took place. Prior to the conclusion of the Buroj deal it was an SDA politician who was sent to Dubai to liaise with Ahmed and to promote the prospected investment at a real estate fair (Ekapija.ba 2015), not a formal body like the Foreign Chamber of Commerce of Bosnia-Herzegovina.<sup>334</sup> Nor was the Federation-level Ministry of Spatial Planning consulted.<sup>335</sup>

Political facilitation also seemed evident in the character of the deal, or 99-year “freehold”, i.e. a long-term lease. Ahmad and Berilo signed it in October 2015 at a high-profile event at Sarajevo city hall, with Konakovic joining their hands. In the contract itself, Ahmed formally agreed to provide resources for the new regulatory plan.<sup>336</sup> The municipality would invest twelve million euros in electricity infrastructure, which Buroj would refinance (at an unknown date).<sup>337</sup> Trnovo also held a right to thirty per cent of Buroj’s profits (Ljubas 2015). The municipality would also ensure that the land would be expropriated, for which the council needed to give its approval. Trnovo was still obligated by law to make a public tender, which Buroj theoretically could lose to competing bids. However, Berilo claimed that Ahmed accepted this risk, even if he had to already pay for the new regulatory plan.<sup>338</sup>

General and municipal elections were a year away. SDA figureheads like Izetbegovic broadcast their involvement with the deal in local and global media (GCR 2015)– repeating how it would bring

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<sup>332</sup> Independent Bosnian urbanism expert (AI.12). 20.11.2015, 2.12.2015.

<sup>333</sup> Bosnian official (AI.20), Sarajevo, 26.10.2015.

<sup>334</sup> The president of the Foreign Chamber explained that as a rule (foreign) real estate investors prefer to directly go to the municipality. The chamber only engages if a local municipality asks its support to find an investor (e.g. for a real estate project). As in this case an investor had already found Buroj, the Chamber was not involved. Mirsad Jasarspahic (NI.19).

<sup>335</sup> Edin Forto, Vice-president of Nasa Stranka quoted at a public hearing on the Draft Decision on the adoption of the regulatory plan “sports-recreational center Bjelasnica-Donja Grkarica-Precko Polje (Arslanagić 2016).

<sup>336</sup> In January 2015, a basic agreement on the contract had already been made and by June 2015 they had agreed on the outlines of a regulation plan that would permit using the land in the Precko Polje area for construction purposes. Ibro Berilo (NI.20).

<sup>337</sup> Ibro Berilo (NI.20).

<sup>338</sup> Idem.

jobs and investment. Even before the deal was signed billboards promoting Buroj emerged around the Canton (including at Precko polje, the airport and around the city centre). Berilo himself pronounced the great pay-offs of the deal in the media as soon as he signed it. Starting with the first construction planned for the Spring of 2016, he announced subcontracts for “Bosnian” and “local” construction companies that his municipality would help dispense in the next eight years. In a subsequent interview with Deutsche Welle, Berilo was quoted saying that “only local companies and local materials will be engaged in this project” (Klix.ba 2015).<sup>339</sup> And in an online video Berilo declared that “because of this project, Trnovo municipality will be the richest town in Bosnia and Herzegovina...the richest...in the Balkans” (Sens Servis 2015).

### *Unavailable information and unanswered questions: 2015-2016*

Given this kind of outreach, the deal also raised many questions among observers. At the time of the ceremony, Berilo stated the Buroj deal “was the most transparent project in Bosnia-Herzegovina” (Klix.ba 2015). True or not, state-level authorities in theory were competent to investigate. They evidently did not.<sup>340</sup> The EU, US and IFIs formally appeared silent about the project, although the EUD on its Facebook-page quoted Berilo saying that “realizing” the Buroj Ozone project would favour local job-seekers.<sup>341</sup> Observers of local media noted that outlets affiliated to the party figures who were involved in the deal remained uncritical about the deal’s coverage. One interviewed local journalist suggested that for other (party-affiliated) papers the project was not relevant enough to be “attacked”.<sup>342</sup>

<sup>339</sup> Author’s notes from presentation by Ibro Berilo at Vijecnica Signing event, 10.15.2015. In an interview a Trnovo official clarified Berilo’s statement that stating that while foreign companies cannot be excluded from various tenders, the municipality can state that it helps if a bid comes from a domestic company. Only the best quality bid would be awarded. Official (AI.1).

<sup>340</sup> The State-level Foreign Investment Promotion Agency has the formal authority to investigate compliance issues with regard to a specific foreign investment, but only if such an investigation is approved by the state-level Council of Ministers (appointed by the Bosnian Presidency). The Council of Ministers was led by Prime Minister Denis Zvizdic at the time, who was incidentally also the canton’s same prime minister involved in the BCB Board during Ashdown’s period (Trnovo Municipality 2006).

<sup>341</sup> The EUD posted hashtag “#Trnovo#BiH#Bosnia#Buroj#BiH#EU#EU” followed by Berilo’s quote “The realization of this project...will mean that...we employ people from other municipalities, primarily Trnovo, Hadzici, Ilidza...just imagine how many people will be engaged in the construction, when the city is built, it will certainly employ 10,000 people. it is essential that all work [is done by] domestic companies.” [https://www.facebook.com/permalink.php?story\\_fbid=1187910207892494&id=162503637099828](https://www.facebook.com/permalink.php?story_fbid=1187910207892494&id=162503637099828) (last checked 13/06/2018).

<sup>342</sup> Interview local journalist (AI.21), 05.11.2015.

However, key aspects of the deal led to local actors demanding clarification. For instance, an online news outlet, Klix.ba, asked to publish the contract, a request which was (partially) granted.<sup>343</sup> Some local activists wondered whether the deal was not a “land grab” in the making. Once Precko Polje was expropriated, Ahmed might pull out. That would leave Trnovo with more municipal land (and a regulatory plan), which, given poor local oversight, could be abused to enable rent-seeking for selected cronies.<sup>344</sup> Interviewees suggested this possibility remained under-investigated by local media, which was said to have limited experience investigating this type of land deal (a 99-year free-hold lease).<sup>345</sup>

However, Eko-akcija, an environmental activist group had launched a press release days after the signing ceremony, which local outlets did cover. It stated that “residential development on [mount] the Igman and Bjelasnica, legal and illegal...[had] intensified” once the possibility of land deal at Precko polje was first announced in early 2015. The group also alleged Trnovo had no means and/or intention of effectively regulating land use restrictions. It highlighted the contamination risk to Sarajevo’ water supply, citing that this had already occurred at Babin Do a result of the public infrastructure on the mountain being badly outdated.<sup>346</sup>

However, it was difficult to verify information whether and to what extent these risks really existed. Cantonal and municipal authorities would not publicly share their assessment of these risks, nor answer questions about who would be responsible in case of environmental mishap.<sup>347</sup> Berilo said the activists misunderstood the concept of “water protection zones” (a designation for areas that served as a water supply) and therefore did not “know how to discuss about it.”<sup>348</sup> When asked why the cantonal planning authorities would not publish this information Berilo repeated this type of answer, he

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<sup>343</sup> Klix was allowed to publish a copy of the contract and not the original online (Klix.ba 2015).

<sup>344</sup> Anes Podic (NI.14).

<sup>345</sup> Podic believed this was because the media were mostly beholden to the political parties. Anes Podic (NI.14). However, a Klix interviewer of Berilo asked what happens after the lease ends in 99 years (Klix.ba 2015).

<sup>346</sup> Local journalist (AI.21).

<sup>347</sup> Eko-akcija referred to the 2010 incident where a newly constructed building at Babin Do connected to the damaged sewage facilities ended up contaminating one of the sources of Sarajevo’s water supply (Podic 2015).

<sup>348</sup> Anes Podić (NI.14).

<sup>349</sup> Ibro Berilo (NI.20).

answered that releasing this information would not be comprehensible to non-experts.<sup>349</sup>

Much information about the deal remained publicly unavailable when the “Draft Decision on the adoption of the regulatory plan ‘Sports-recreational center Bjelasnica-Donja Grkarica-Precko Polje-Kolijevka’ was presented at a public hearing in early 2016. Eko-akcija was present at this hearing, and joined by politicians of Nasa Stranka (NS). They attempted to get answers to questions about the deal.

Edin Forto, a VP for NS, asked about the lack of transparency disclosure, particularly regarding the risk to Sarajevo’s water supply and the lack of a financial disclosure.<sup>350</sup> Berilo declined to answer, stating only that he wished not to discuss the project with those who could only criticize it, or who only wanted a national park in the area.<sup>351</sup> Berilo was legally entitled to not respond given the type of hearing.<sup>352</sup> To Forto, it was thus

“clear that there are interests who want all of us to close our eyes to the lack of transparency in the work of municipal and cantonal authorities.... Mayor [Ibro] Berilo acts as if the project ... has nothing to do with the [rest] of Canton of Sarajevo, that this is just a matter of concern for the local community [of Trnovo].” (Arslanagić 2016)

Back at the signing ceremony in October 2015, Berilo had stated that following a public hearing, he would remain committed to implement his end of the deal. This mainly meant alienating Precko Polje via expropriation. This required a decision by Trnovo’s municipal council members to declare the deal in the public interest. Even with so much information yet unavailable, and months before he would succeed in gathering the votes for such a decision, Berilo said that he was sure of securing the needed political support.<sup>353</sup>

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<sup>349</sup> Official responsible for land use regulation (AL14).

<sup>350</sup> (Nasa Stranka 2016). Asked about the financial integrity of Buroj in an interview with the author, Berilo said Trnovo did not have any details on Ahmed’s credit worthiness yet “until there is actually a case where they [Buroj] are not meeting any of the criteria, we do not have any reason to doubt [them]”. Ibro Berilo (NI.20).

<sup>351</sup> See epigraph.

<sup>352</sup> Bosnian law stipulates that in the presentation of a new regulatory plan a public consultation needs to be held, a mayor is at liberty to choose between a form where he (or his delegates) are not obliged to disclose information or respond to concerns stated by citizens. Nasiha Pozder (NI.12), 18.05.2016

<sup>353</sup> Berilo stated that about five percent of landholders were refusing to alienate their land. Some private owners had not (yet) secured titles. Ibro Berilo (NI.20).



## Concluding remarks

This chapter found that the contested authority over alienating land near Bjelasnica originated from the legacies of Yugoslavia and its dissolution. The Federation inherited a plan to preserve the area as a national park and had an opportunity to do so as war destroyed Bjelasnica's Olympic ski facilities. However, local actors, especially in Trnovo, dreamt of (re)developing the area for (winter) tourism. Both efforts failed repeatedly. The post-war institutional framework ambiguously dispersed authority over the right to alienate local land and to change land use rules. This created a high risk of contestation. While a conflict over this authority did break out, it was Trnovo's mayor who ultimately succeeded to undermine the Federation's attempt to establish a park via FBiH's constitutional court.

This meant local mayors like Berilo retained broad discretionary authority and remained positioned to politically facilitate local real estate development. In Trnovo's case this appeared to attract a Gulf-based investor like Buroj. However, the mayor of Trnovo recognized that national political leaders like Izetbegovic and the prime minister of Sarajevo canton were key to facilitate the institutional changes needed to help the Dubai-based developer secure privileged access to the pristine land near mount Bjelasnica.

Evidently, these politicians' common motivation was to woo voters in an area with a small and apparently underemployed electorate with the promise of jobs and large-scale real estate investments.<sup>354</sup> At the same time, they showed limited concern for the risks of rent-seeking, illegal construction and environmental damage that a mass-tourism real estate development in an undeveloped natural area might enhance. Indeed, their informal political facilitation of changing the relevant land use rules for the area in the period leading up to, and following the land deal was opaque: key figures involved in the deal refused to publicly share basic information about these risks. While the lack of available information led to some political and civil society figures to ask critical questions, their impact, including on the deal itself appeared highly uncertain.<sup>355</sup>

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<sup>354</sup> Berilo was reelected as mayor in October 2016.

<sup>355</sup> By the middle of 2016, a foundation stone had been laid at Precko polje (Galijas 2017).

This lack of local countervailing power could have been balanced by liberal state-builders. Yet their involvement was sporadic and ad-hoc. Ashdown politically facilitated real estate investment on Bjelasnica in the mid-2000s. That sharply contrasts with the (earlier) support of the EC and (later) support of the World Bank for establishing a national park in the area. Just before and after the Buroj deal, a deal that involved local and national leaders of government who appeared to move land alienation governance away from the PIC (2000) aim of opening access to real estate markets, liberal state builders were notable for their absence.

# III

## Kosovo

“Now in the territory of Kosovo

there is no piece of land

that has no owner.

There is no land

without...documentation”

(2015)<sup>336</sup>

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<sup>336</sup> Author’s notes on speech by Ferid Agani, Minister for Environment and Spatial Planning, Government of Kosovo (GoK) at the Multi-Purpose Cadastre Regional Conference, Pristina, 15.06.2015.

# 6

## Recovering Kosovo's Cadastre

“We need to have it [the cadastre], no matter if someone is afraid or not. We need the truth.”

Ferat Shala (2015)<sup>337</sup>

“Kosovo’s property registration system does not yet function sufficiently to secure and protect property rights throughout the territory or to enable a smooth transition to a market economy. Neither the legal framework, [the] implementation of it, [n]or access to the property registration system is adequate...to ensure that it reflects the current or future situation of property rights in Kosovo.”

(OSCE 2003:vi)

Defeated and forced to leave by NATO’s intervention, officials of the Federal Republic of Yugoslavia succeeded in a last rear-guard action in the late Spring of 1999: they managed to take most of Kosovo’s land records to Serbia. The land registration system, locally known as ‘the cadastre’, provided information about the rights to land, buildings and apartments across the former SFRY province. Kosovo’s records were composed largely of physical maps and legal files on each individual parcel. They had been stored at the central cadastre agency; at municipal cadastral offices (MCOs); and in immovable property rights registers (IPRRs) (Cordial and Røsandhaug 2009:69). Most of these records were out-dated. Still, their “theft”<sup>338</sup> occurred at a most inconvenient time. In June 1999, former residents were moving out of Kosovo, while many others moved in. Soon an illegal construction boom was enveloping Kosovo’s cities, especially the capital.<sup>339</sup> Changes to de-facto land

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<sup>337</sup> Interview Ferat Shala (NI.24), Deputy Minister for Environment and Spatial Planning (MESp) Pristina, 22.06.2015.

<sup>338</sup> A term used by opposition MPs who were antagonistic to the arrangement of the return of Kosovo’s cadastre (Gazetta Express 2015).

<sup>339</sup> See introduction and chapter 7.

and real estate holdings were thus occurring all the time. Yet with a cadastre that existed in Kosovo only partially, it was most difficult to update land records accordingly. Kosovo's cadastre thus appeared to be at a high risk of becoming an empty shell. That might have contributed to actually observed situations of unregulated land access: i.e. where anyone with the physical means of violence could usurp real estate regardless of local land rights and with relative impunity (OSCE 2006a). Further, for those who needed authoritative information about land rights in Kosovo the situation increased uncertainty: both because the cadastre now existed in two jurisdictions (Kosovo under UNSCR1244 and Serbia) and because it generated opportunities for rent-seeking (namely manipulating older land records to validate "fraudulent" transactions) (Nawaz 2008:4).

By mid-2015 two processes of institutional change were underway that sought to recover Kosovo's cadastre. The first involved reconstructing the cadastre based on information about land rights that was in Kosovo. This process appeared to make Kosovo's land registration system more up to date and authoritative, judging by the increasing number of registered real estate transactions and a fledgling mortgage market (see figure 12 and 13 below). The second process, by contrast, paradoxically appeared to create uncertainty about the reliability of Kosovo's land records, and to endanger the fledgling formal land market that had emerged. It involved returning Kosovo's cadastral records in Serbia, and setting up a new institution that would compare the old land records with those in the new land registration system, in order to verify the validity of the latter.

This chapter describes the origins and drivers of these two processes to recover Kosovo's land registration system and how the outcomes observed in 2015 came about.

### *The weak state of land registration before June 1999*

State authorities have been historically weak in registering real estate in Kosovo. In the Ottoman period, cadastral authorities had conducted surveys so to better collect household taxes. Yet these surveys were estimated to never cover more than one third of the population (Familysearch 2017 cf. Kark 1997). Where imperial tax collectors failed (Mangalakova 2004:9), the Kanun, a medieval code

which was orally conveyed and used witness accounts as land records, appeared to regulate land rights instead.<sup>360</sup> The Kingdom of Yugoslavia regarded these orally conveyed land rights as legally void. It instead deployed a modern system of cadastral mapping, and used it to convert land without physical records to state land, which it could then reallocate to colonists (Stanfield et al. 2004:1–2). However, also the Kingdom’s land registration system appeared to fail at making land records generally accurate and reliable (Stanfield and Tullumi 2004:3).

During Socialist Yugoslavia just nine per cent of Kosovo’s cultivated land had been collectivized by the state. The remaining land was held by SOEs and individual farmers (Stanfield and Tullumi 2004:3). Yet the incentives to record these rights were low under decentralized socialism.<sup>361</sup> Moreover, in Kosovo ethnic repression exacerbated a situation where land records hardly reflected the reality of land holding and use. In 1989 Milosevic began imposing laws that forced Kosovar Albanian workers in SOE companies to choose between pledging loyalty to the Serbian republic (which had annulled Albanian language rights), or to lose their possession rights to socially-owned apartments that came with their job. As many Kosovar Albanians refused to make the pledge, the state believed it had legal grounds to annul their possession rights and evict them.<sup>362</sup> Milosevic’s regime also imposed a law that aimed to halt Serb migration from Kosovo by forbidding Kosovar Serbs to transfer property and exercise their alienation rights vis-a-vis individuals from the Kosovar Albanian majority.<sup>363</sup>

However, these discriminatory laws appeared to mainly succeed in reinforcing existing historical trends: generally, toward more distrust of state institutions<sup>364</sup>, including land registration, and specifically toward more informal real estate exchange. Kosovar Albanians sold, bought, subdivided, gifted and inherited real estate, but without registering such transactions in the land records held in courts and the cadastral offices (OSCE 2003:6–7). Land records were thus rapidly rendered

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<sup>360</sup> E.g. the Kanun used oral code, like “the boundary stone has witnesses behind it”, to delineate land boundaries (De Waal 2005:87). What became of the Kanun’s role in land registration governance in Kosovo remains unclear. Some interlocutors stated it is still in-use in Kosovo’s western mountains (Unidentified contributor (AI.3)), but the author was unable to verify this. For general information, see e.g. Mangalakova (2004); De Waal (2005).

<sup>361</sup> See chapter 2.

<sup>362</sup> Interview Agron Beka (NI.25), Project Coordinator, Social Housing Property Rights Kosovo, Pristina, 16.06.2015

<sup>363</sup> This ‘Law on Changes and Supplements on the Limitations of Real Estate Transactions’ (1991) stipulated that “every contract on sale of properties in Kosovo” would require approval from the Directorate of Property Affairs in Serbia’s Ministry of Finance. If a contract would affect “the national structure of the population” or cause “enigration of members of...a particular nationality” it could be refused. Records suggest that nearly all “were rejected.” (Cordial and Røsandhaug 2009:67).

<sup>364</sup> Many Kosovar Albanians came to consider cooperating with authorities that served Milosevic’s regime as treasonous (Pula 2004:807).

inaccurate and incomplete between 1989 and 1999 (Cordial and Røsandhaug 2009:67–69).

Matters were subsequently made even worse for Kosovo's land registration system by two waves of mass abandonment and reoccupation of real estate.<sup>365</sup> Moreover, the destruction of half of Kosovo's pre-war housing stock (around 300.000 homes damaged or destroyed and 75.000 abandoned) contributed to a post-war housing crisis (Dorsey et al 2004:4). To cope with this situation, many occupied abandoned private homes and social housing. Some estimate that in ninety per cent of such occupations, Kosovar Serbs formally still held the possession rights.<sup>366</sup> Thus even before Kosovo's cadastre was taken to Serbia, information about land rights was highly likely to be inaccurate, even as much actual real estate activity went on unrecorded.

### *The restitution agenda and unrecorded land redistribution after June 1999*

The state of land records deteriorated still further following NATO's intervention. UNMIK maintained that formally all Yugoslav laws from before 1989 were non-discriminatory and to remain in force.<sup>367</sup> Yet by August, many formal rules governing land seemed to be fast becoming empty shells. Situations of unregulated land access appeared to proliferate across Kosovo. Refugees and migrants seized agricultural land, and fuelled by an influx of diaspora money, built new residential and commercial buildings in and around cities like Pristina at rocket speed (Vöckler 2008).<sup>368</sup> The lack of authoritative information about land rights seemed to further enable certain armed individuals in seizing land and apartments. Minorities seemed especially vulnerable to have their land rights usurped, as the thirty-seven-thousand KFOR soldiers that entered Kosovo seemed to structurally not intervene. Meanwhile, an international force of three thousand law-enforcers and adjudicators was slow to arrive (Rozen 1999).

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<sup>365</sup> In 1995 Serbo-Croatians resettled in Kosovo. The second wave involved many Kosovar Albanians who were displaced during the conflict as well as a large number of Serbs that fled their properties after the fighting in 1998-9. A third of wave of (mostly Serb) refugees left Kosovo with mass-ethnic violence in 2004. The numbers associated for each of these waves are controversial and vary greatly. For detail, see Todorovski (2015).

<sup>366</sup> Interview KPA official 1 (AI.22), Pristina, 25.05.2015.

<sup>367</sup> Agron Beka (NI.25).

<sup>368</sup> A 2009 survey showed that approximately a quarter of all remittances went into home repair and construction (World Bank 2010:78). See chapter 7.

UNMIK soon recognized the risks that this situation posed, particularly vis-à-vis its aim of enabling restitution. Keeping Kosovo multi-ethnic was a core tenant of UNMIK's mission.<sup>369</sup> If the real estate that had been redistributed through wartime violence and pre-war discrimination was not restituted, UNMIK feared incentivizing further lawlessness, and that it would fail to restore stability in Kosovo. To address these risks, UNMIK established two restitution bodies. These would bear responsibility for resolving the restitution claims that related to the Kosovo conflict and period of discriminatory laws (from 1989 to 1999). The Housing and Property Directorate (HPD) processed restitution cases and a Housing and Property Claims Commission (HPCC) adjudicated them (UNMIK 1999). The HPD was given access to land records in Serbia, and was allowed to establish liaison offices there. This was crucial for claim verification, also considering that some individuals in Serbia might possibly continue to use Kosovo's land records.<sup>370</sup> UNMIK's restitution agenda thus rested on cooperation with the Serbian cadastral authorities, the Republic of Serbia Geodetic Administration (SRGA).

The HPD's cooperation on restitution with the SRGA was problematic: it depended on horizontal cooperation. The evidence suggests this cooperation did not expedite the restitution process, which was slow to begin with (due to finding documents, verifying them etc.<sup>371</sup>). This slowness further incentivized informal real estate transfers<sup>372</sup> and encouraged extra-legal expropriations. Again, minorities were observed to be particularly vulnerable to the latter: ex-KLA commanders allegedly were particularly prone to engage in "vengeance-driven expropriations".<sup>373</sup>

UNMIK sought to address its dependency on the SRGA by attempting to negotiate a return of Kosovo's land records from Serbia. Although a negotiation process started shortly after the war, this attempt at recovering Kosovo's cadastre remained stuck.<sup>374</sup>

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<sup>369</sup> See chapter 2.

<sup>370</sup> Interview KPA official 1 (AI.22). Also see (European Commission (2005:32).

<sup>371</sup> Frequently, applicants for restitution had little more than an old tax bill to take to court. Agron Beka (NI.25).

<sup>372</sup> According to a former restitution clerk, many successful property Serb claimants grew impatient waiting for the HPD's decision (and its successor the Kosovo Property Agency (KPA) and informally sold their possession rights. KPA official 1 (AI.22), 25.5.2015.

<sup>373</sup> Judah (2002:288-89) noted that KFOR failed to stop such targeting of minorities. Janssens states that KFOR troops even acted on specific orders to not enforce land rights when minorities like Serbs were concerned (Janssens 2015:107). Ex-KLA commanders that allegedly engaged in this behavior included the brother of Hashim Thaci (Tawil 2009:31), the political head of the KLA, and at the time of writing, President of Kosovo.

<sup>374</sup> According to Nawaz (Nawaz 2008) this was especially so from 2002. Also see (European Commission 2005b:32, 2009b:9, 2010b:26-27).



This status quo outcome left possibilities for manipulating Kosovo's land records in Serbia.

Interviewees knowledgeable about Kosovo's restitution process claimed that it thus positioned some actors to secure the land rights to particular properties. They observed that particularly those who remained well-positioned in Kosovo's post-war politics would have opportunities to engage in this form of rent-seeking.<sup>375</sup> The suspicion thus arose that the old cadastral records in SRGA in Serbia were not frozen, but also changing in ways that were not publicly recorded.<sup>376</sup>

Meanwhile, land registration institutions in Kosovo continued to be dysfunctional. This institutional failure, combined with the general lack of enforcement and new local demand for housing helped boost illegal construction (see next chapter) and a growing informal real estate market. By the mid-2000s, the latter was estimated to account for a quarter of Kosovo's GDP (World Bank 2010:3). Thus real estate and land transactions occurred, but unrecorded.

### *Obstacles to reconstructing Kosovo's cadastre: 2000-2003*

By 2000 the UNMIK administration appeared to recognize the problems this created for Kosovo. With financial resources provided by UN-Habitat, Sweden, Switzerland and Norway, and with an UNMIK decree, the Kosovo Cadastral Agency (KCA) was established in October of that year (Meha, Llabjani, and Bublaku 2004:2). The KCA was placed under the authority of the Ministry of Public Services of the Provisional Institutions of Self-Government (PISG). The KCA became formally responsible for organizing the scanning and reorganizing of cadastral data at a country-level. Local level data was to be maintained and managed by all the 22 Municipal Cadastre Offices (MCOs). The MCOs would be recording the local real estate transactions (sales, inheritance, mortgages), and issue extracts of existing records and maps to citizens or "customers" (both the KCA and MCOs were authorized to charge fees for these services<sup>377</sup>) within their relevant jurisdictions. These cadastral

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<sup>375</sup> An interviewee who was in a position to know suggested several hundred of such cases may have occurred over the course of 15 years since the war. International expert (AI.8). This possibility appeared to be recognized by the OSCE (2003:viii).

<sup>376</sup> Interview KPA official 2 (AI.23), Pristina, 2.06.2015.

<sup>377</sup> Evidently, the MPS co-determined fees with the KCA and MCO (GoK 2008b:30), e.g. for common services provided in active formal real estate markets (ibidem 2008:94-5).

authorities thus had the possibility to formally begin recovering and reorganizing land records that were still in Kosovo.

Yet the KCA and MCO faced many obstacles to do so. Firstly, missing so much of the graphical and legal information about specific land parcels made recovery a challenge. For instance, the most recent Kosovo-wide aerial photos were from 1961 (Meha et al. 2004).<sup>378</sup> Time-ordered cadastral change books (which recorded e.g. transfers, subdivision or merging of parcels) and possession lists (describing the location, number, the type of a parcel) were often missing as well. Court archives could help fill in some blanks, yet these were often poorly indexed, housed and maintained (Meha et al. 2004; Stanfield et al. 2004:7-9).

Secondly, physical and human resources were short. Modern scanning equipment to digitize land record information was short. Staff in the KCA and MCOs needed training in these modern tools. However, KCA officials managed to convince international donors that cadastral reconstruction depended on their continued technical, physical and human resource support (Meha et al. 2004:5-6). Yet even with those resources, officials spent the first 2 years “stabilizing: the available data.”<sup>379</sup>

Thirdly, laws crucial for land registration in Kosovo were not in place. Yugoslav-era laws only were often insufficient as a legal basis for reconstructing land records. For instance, the KCA was not authorized to legally record land rights in the IPRR. The KCA and international community thus sought to change in order to give the Kosovo’s institutions greater authority and legal scope for reconstructing the Cadastre. Yet it took until 2002 before such a law was adopted.<sup>380</sup> Even then, its institutionalization was inhibited by a lack of supplementary legislation, which had not yet been proposed. This meant that it was formally difficult, if not impossible, for Kosovo’s cadastral authorities to change land records if the HPD restituted possession rights<sup>381</sup>; if the privatization agency alienated socially owned property (OSCE 2003:6-7); or if private actors agreed on mortgages.<sup>382</sup> If

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<sup>378</sup> Further, many municipalities that had complete cadastral records claimed that these were badly outdated (OSCE 2003:7).

<sup>379</sup> Interview Murat Meha (NL26), CEO of the KCA, Pristina, 25.052015.

<sup>380</sup> The Law on Establishment of an Immovable Property Rights Registries, Law No. 2002/5 (2002).

<sup>381</sup> Eventually the HPD and KCA agreed that the KCA would acknowledge restitution claims, even if no formal law for this was yet in place (Cordial and Rosandhaug 2009:71).

<sup>382</sup> As per the law on Mortgages 2002/4, art.2.6.

changes to land and property rights were not registered in the IPPR, they could formally not be much less easily be legally verified (e.g. in court) nor enforced (e.g. by UNMIK police).

A series of measures were proposed to address these technical, resource and legal obstacles. In December 2003, the Law on Cadastre (2003/25) filled part of the legal gap by defining the concepts, land rights, as well as procedures for recreating and maintaining the cadastre through cadastral surveying. Its stated purpose was to record:

“all...data on land, buildings, parts of buildings, cadastral plans...[to] support the administrative, juridical, economical and scientific purposes...[it] shall raise and verify the data for the Kosovo Cadastre and the Cadastre and Land Information System of Kosovo (KCLIS). It shall secure the basis for the immovable property rights by the creation of land parcels, buildings and part of buildings and the determination of their boundaries.”<sup>383</sup>

By making the IPPRs (legal information) and the cadastre (graphical information) into a unified and integrated whole, land rights could be made more “secure”. This law was soon institutionalized to some extent. The IPPR’s electronic register came online in 2004<sup>384</sup>, making it possible to update changes across MCO registries in real-time (Meha, Cromptvoets, and Çaka 2014).

Nevertheless, other factors prevented the institutionalization of the KCLIS.

For one, there was confusion about the responsibilities of the MCOs and the KCA. The KCA formally oversaw the work of the MCOs, but their directors were appointed by local mayors. This was in accordance with UNMIK’s decision to decentralize authority and institutionalize local self-governance.<sup>385</sup> Moreover, coordination was a complex task for the KCA, as the organizational structure of MCOs differed from municipality to municipality (Meha et al. 2004:5-6).

Further, the hierarchy for steering the institutionalization effort was not clear (OSCE 2003:viii), with several high-level actors de-facto bearing authority for deciding the strategy to recover the cadastre. On paper, it was the chief executive officer (CEO) of the KCA that seemed to be mainly

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<sup>383</sup> Law No. 2003/25 Law on Cadastre, part 1, section 1.

<sup>384</sup> Murat Meha (NI.26).

<sup>385</sup> Interview Local property rights expert (AI.25), Pristina, 19.5.2015; regarding the decentralization by UNMIK see e.g. UNDP (2006).

responsible for this task. Yet he was appointed by, and accountable to, a Senior Public Appointments Committee. This body comprised of a wide range of actors: the Prime Minister of the PISG and the Minister of Public Service (MPS), two Ministers from non-Kosovo Albanian communities, three UNSRSG-appointed “eminent inhabitants of Kosovo”, as well as three internationals.<sup>386</sup> According to the Government of Kosovo (GoK)[writing in 2008] the Committee changed the CEO frequently. Too much consideration was given to the CEO’s “political views” as opposed to the CEO’s “managerial skills”. Retroactively, this was seen as “a major problem” that inhibited the KCA to develop and follow a strategy for institutionalizing a functional and harmonized land registration system (GoK 2008b:21). On the other hand, institutionalization of the KCLIS strongly depended on another position, the Minister of Public Service. He was responsible for authorizing formal administrative instructions that defined the authority, performance standards and responsibilities of private surveyors; as well as fees that MCO were to receive for their services. As he did not do so (OSCE 2005:13) the task of standardizing land measurement and surveying was also greatly complicated, and thus also the task of making land registration more reliable.

Additionally, there continued to be a lack financial and human resources, at least according to the KCA and MCOs. The PISG had claimed to fund the reconstruction of cadastral services (GoK 2008:94). Yet Murat Meha, the KCA’s CEO (2003-2006<sup>387</sup>) appeared to complain that the KCA was “entirely dependent on...donating governments” for cadastral reconstruction (Meha et al. 2004:5-6). Moreover, the PISG incurred the fees paid for services provided by the KCA and MCOs, while these fees tended to exceed the amount of budget that the PISG allocated to the KCA.<sup>388</sup> Moreover, the KCA and MCOs were said to be understaffed<sup>389</sup>, and insufficiently and varyingly trained in registration techniques and methods, thus inhibiting harmonization of land records (idem).

Finally, the effort to reform Kosovo’s land registration system was undermined by rent-seeking. A

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<sup>386</sup> As per IV, 16, Regulation No. 2001/36 On the Kosovo Civil Service.

<sup>387</sup> Murat Meha was CEO from 2003 to 2006 and from 2010 until the time of writing. [http://fna.uni-pr.edu/getattachment/Personeli/Personeli-akademik/Dr-sc-Murat-Meha/CV\\_Murat-Meha\\_engl\\_2014-FNA.pdf.aspx](http://fna.uni-pr.edu/getattachment/Personeli/Personeli-akademik/Dr-sc-Murat-Meha/CV_Murat-Meha_engl_2014-FNA.pdf.aspx) (last checked 13/06/2018).

<sup>388</sup> In hindsight, the GoK noted that MCOs with active real estate markets, like Pristina or Prizren, generated significant revenue from land market activity, yet that centrally redistributing these ‘surpluses’ to MCOs with less active land markets, was not possible (GoK 2008b:30,100). UNMIK Administrative Instruction of 2006/04 found in GoK (2008:94).

<sup>389</sup> Compared to other successor states (GoK 2008b:32,99).

status quo existed where mechanisms to control and minimize rent-seeking opportunities were weak (OSCE 2003:viii). Positions existed that could check the land records that MCO recorded in the IPRR. Yet where this checking occurred it was often deficient (GoK 2008b:24-25). According to the Anti-Corruption Resource Centre this situation, with its lack of accountability in land registration, was a “breeding ground for corruption and manipulation of documents and registers” on land rights (GoK 2008:94). The arrest of two officials from Pristina’s MCO allegedly manipulating land records to enable particular property transactions in 2002 was particularly harmful. The case led to a joint decision by the KCA, UNMIK and the PISG Department of Justice to retroactively freeze registration all of the property transactions undertaken since the end of the war until a new KCA audit commission verified their legality. Observers saw this as severely damaging the credibility of information on land rights in Kosovo, and the and integrity of authorities responsible for maintaining them (Nawaz 2008; OSCE 2003:8-9).

### *The limited impact of external conditionality on “property rights”: 2003-2007*

The OSCE had recognized many of the above mentioned problems as central defects by mid-2003 (OSCE 2003, 2005a). By then its rule of law department had comprehensively reviewed Kosovo’s property rights system, and recommended that the PISG fix the broken land registration system. This was crucial if Kosovo was to “secure and protect” land rights and to “enable a smooth transition to a market economy” (see second epigraph). At the end of the year the international community and PISG did actually agree on a new reform agenda, the so-called ‘Standards for Kosovo’ (from here ‘the Standards’), which benchmarked “progress” in attaining “good governance”, including on “Property Rights”. Yet before an implementation plan was prepared for this new agenda, ethnic riots broke out which involved ethnically-motivated expropriation and destruction of religious and residential property. International observers noted this state of unregulated land access with alarm. Resultantly “strengthening of the property rights system” became “a political priority in and of itself” for the international community in Kosovo (Katz and Philpott 2006:105). Two weeks after the riots, a

Kosovo Standards Implementation Plan (KSIP), was adopted.<sup>390</sup> KSIP recognized land registration reform as a top priority for Kosovo's transition to a market-based economy:

“Until the process to reform the immovable property rights registry and cadastre, which has been slow and complex, is complete, Kosovo remains without a consolidated and relatively accurate basis for secure tenure and property transactions”(Standards 2004).<sup>391</sup>

KSIP set nine smaller “property rights” goals. Each goal had a number of priority actions, which were assigned to “responsible authorities”. These authorities were to carry out each action over a short and medium term (UNMIK and PISG 2006). Property rights goal 7 aimed towards a situation where “a property rights registry has been established and is functioning and municipal cadastral surveys have been completed.” One of its seven smaller priority actions was that the KCA and MCOs were to “undertake cadastral surveys – aerial and land – in a non-discriminatory and transparent manner” without omitting “unfinished constructions.” Another was that the provisional government was expected to provide “adequate” human and technical resources for MCOs so “to provide effective, transparent and non-discriminatory access to services to the public.” Together with UNMIK, PISG was also expected to undertake “active requests ... to gain access to all relevant property records...outside Kosovo”: i.e. to negotiate the recovery of the land records from Serbia. All of this was meant to be achieved within the next two years (Standards 2004). Additionally, an ‘expert group’ of “municipalities and UNMIK agencies”, was to coordinate development and implementation of new laws for land surveying and determining real estate values (Standards 2004:goal.1.7).

Nevertheless, these ambitious external standards were not met within the pre-determined timeframe by local authorities. After half a year, the UN Secretary General reported very limited progress. The expert group that was supposed to lead the process had not (even) been formed (UN Secretary General 2004).

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<sup>390</sup> The plan contained 506 [priority] actions designed to help the Government meet the said Goals” (UNMIK and PISG 2006).

<sup>391</sup> The Standards also highlighted enforcing land and property transfers: “Municipal Authorities and relevant governmental structures support a smooth and reliable transfer of ownership rights” (Standards 2003:12).

Meanwhile, the EC's first report on Kosovo depicted a still dire situation of unregulated land access:

“a general sense of lawlessness and a perceived culture of impunity surrounding property issues. Property rights suffer from incomplete and sometimes missing records, inadequate property related legislation, implementation problems, ineffective municipal regulation of construction, discriminatory practices and lack of coordination between responsible actors.” (European Commission 2005b:18).

The EU partially blamed Serbia for the situation. By still refusing to return Kosovo's cadastral records stored in Serbia in 2005, the Government of Serbia (GoS) inhibited “the establishment of property rights” and enabled “fraudulent practices” according to the EU. At the same time, the EU pointed a finger at local authorities. For the report added that “a functioning judiciary system is indispensable” to make “improvements” in land registration governance effective (European Commission 2005:32-3): a “backlog of property related court... cases” numbering 44 thousand and “irregular practices regarding the verification of property transfers” (European Commission 2005:32-3) was bad enough. This also incapacitated the judiciary and law enforcement, and enhanced risks that contracts were not enforced. The situation caused “high interest rate spreads, costly collateral registration, deficient cadastral procedures and weak credit information”. It was thus seen to generally harm the “business environment and investment activity” (European Commission 2006b).

Both the EU and UN therefore recognized that the lack of effective land registration was undermining the transition to an open-access and market-based economy and a rule of law. According to a UN rapport on the functioning of UNMIK, there was yet another problem. International organizations like the EU<sup>392</sup> and UN that had been active since reconstruction began in 1999 had “Kosovo fatigue”. The rapporteur, Kai Eide, saw this partially explaining why there had been little institutional change since the Standards were adopted. He also particularly underlined UNMIK's lack of leverage in forcing compliance with the Standards conditionality. Eide asserted that for investment and formal real estate transfers to be realized, not just the property rights system needed to be enabled, but

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<sup>392</sup> The EU had been responsible for reconstruction and economic development under the post-war division of labour agreed with UNMIK in 1999.

judicial and law enforcement institutions had to be made functional. Further, Kosovo's status as an entity had to be resolved. He thus recommended to prioritise rule of law reforms and a resolution for this question. Finally, to ensure implementation of the Standards international responsibility was to be shifted from UNMIK to an "enhanced EU presence" (Eide 2005).

The EU concurred. It had just provided Kosovo a perspective on becoming a member state under SAA process in 2003. Since then the UN and EU had highlighted how the SAA and Standards would be mutually reinforcing (Standards 2004:1).<sup>393</sup> In 2004 the EC had still approached Kosovo as part of Serbia and Montenegro (under UNSCR1244), and had included reform goals for Kosovo in that country's Action Plan for Implementation of the European Partnership (EPAP). Yet by October 2005 UNMIK, the EC and PISG had agreed to a single Action Plan for the European integration process in October 2005. In this, the goals set by the UN Standards would be reorganized under European Partnership "key priorities". Three months later the European Council decided that Kosovo ought to have its own "separate plan addressing the priorities concerning Kosovo" (Foreign Affairs Council 2006). Thus from August 2006 onwards, Kosovo received its own EPAP, which then became the main agenda for institutional reform in Kosovo (UNMIK and PISG 2006). The KSIP and EU priorities were integrated. In addition, local authorities set specific goals and they agreed to certain parameters so that the EU could assess progress on the EPAP that same year (European Commission 2008b:6-7). The EPAP designated short or medium-term priorities through so-called EPPs (European Partnership Priorities), just like the KSIP. Each EPP was related to enabling the settlement of Kosovo's status and meeting the Copenhagen criteria for EU accession.<sup>394</sup>

EPP#92<sup>395</sup> was focussed on training MCO and KCA officials, as well as providing sufficient human, physical, and financial resources for "effective, transparent and non-discriminatory access" to

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<sup>393</sup> The Standards for Kosovo (2003) had noted in the preamble that [t]hese standards reinforce Kosovo's parallel progress towards European standards in the framework of the EU's Stabilization and Association Process, based inter alia on the Copenhagen criteria" (Koutrakos 2011:176). The EU also noted that the "eight Standards for Kosovo as the overarching short-term priority" and expressed "serious concerns" regarding the rule of law..., returns ...and property rights" (European Commission 2005:57).

<sup>394</sup> These EPAP "framework parameters" also noted the sector focus; a reference document (e.g. the UN standards); and a budget source (UNMIK and PISG 2006:14).

<sup>395</sup> EPP#92 was placed under the the Political Criteria (under a Human Rights and Protection of Minorities heading).



land records, and to regulate such access through a “functioning accountability mechanisms.” This echoed KSIP. The difference was that responsibilities for reaching this goal were more clearly assigned. For instance, the goal of training cadastral staff now fell directly under the KCA remit.<sup>396</sup> The EPPs also had stronger focus on barring rent-seeking opportunities. The KCA was to become mainly responsible in ensuring “that fraudulent registration practices and/or inadequate application[s] of the law” were “effectively prevented.” Moreover, MCOs that lacked “a digital program” were to be “monitored by the competent persons from [the] KCA through frequent visits.” MCOs were also expected to check their suspicions about possibly fraudulent land transactions by requesting “competent Courts to verify the [relevant] document[s].”<sup>397</sup> In addition the PISG, the KCA and the MCOs, were to jointly cooperate to digitize all IPRRs “by the end of 2006” (UNMIK and PISG 2006:118).

Again, these goals proved to be too ambitious. In the two years before Kosovo would declare independence, in February 2008<sup>398</sup>, Kosovo’s land registration continued to show dysfunction. The observed consequences of this situation were by now familiar. It incentivized informal actions, including resolution of land rights and boundary disputes, particularly in rural areas.<sup>399</sup> In cities, these incentives also existed, yet there citizens more often resorted to the municipal courts to e.g. confirm an inheritance of a parent who had never bothered to get a proof of registration for their home or apartment that they used in Yugoslav times.<sup>400</sup>

This situation appeared to be one explanation for the significant court backlog on property related cases (European Commission 2010b:18). Yet Kosovo’s judges also played a role in this outcome. Judges were appointed by the SRSG<sup>401</sup> and authorized to schedule, verify and resolve

<sup>396</sup> (UNMIK and PISG 2006:118). Under KSIP the KCA had always shared this responsibility with the PISG particularly with the Ministry for Public Services (ibidem:14).

<sup>397</sup> However, the EPAP showed no further parameters for assessing the quality of the monitoring of immovable property transactions. It is also not clear what would define “competent persons” and what “frequent” would mean.

<sup>398</sup> For general reasons for this development see e.g. Ker Lindsay (2009) or Judah (2009).

<sup>399</sup> Local property rights expert (AI.25), 5.19.2015.

<sup>400</sup> Others were still seen to forge land records to enable particular transactions (Collaku 2009).

<sup>401</sup> UNMIK Regulation No. 1999/7 [www.unmikonline.org/regulations/unmikgazette/02english/E1999regs/RE1999\\_07.htm](http://www.unmikonline.org/regulations/unmikgazette/02english/E1999regs/RE1999_07.htm) ; UNMIK [www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001\\_08.htm](http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_08.htm) (last checked 13/06/2018).

property claims. According to a EULEX prosecution, judges abused this authority to resolve land disputes. In fact, one interviewed international official noted that municipal

“judges...had free reign. Becoming a judge at the municipal level is probably the best thing you can do: you get paid 300 euros a month, but that’s not your salary. You are going to make a lot of money if you are using that stamp in the correct way (...) that stamp is everything. It can make or break all sorts of things.”<sup>402</sup>

Socially-owned land appeared especially vulnerable to this judge-enabled rent-seeking. If one looked at satellite imaging of land adjacent to Skopje-Pristina highway, which was considered commercially valuable<sup>403</sup> but legally off-limits land, one would see significantly more real estate developments in 2015 compared to 2000 (Carney 2014:2,18,23). EULEX alleged that a ring of judges that centred on the municipal court president of Pristina, Nuhi Uka, was involved in awarding this socially owned land to claimants, in spite of the fact that the court was not authorized to do so. EULEX would (eventually) allege that the Uka-ring paid out compensations for the land that were “grossly disproportionate” to its “current market value”. According to the prosecutor, their “intent” had been “to obtain an unlawful material benefit for themselves.” He also alleged that there were 15 such cases, one in 2006 and fourteen in 2007 (Carney 2014:8).<sup>404</sup> While in late 2007, just before Kosovo’s declaration of independence in February 2008, UNMIK’s Judicial Inspection Unit of UNMIK opened an investigation into these 15 cases<sup>405</sup>, no UNMIK prosecution had followed.

This evidently highlighted the need for a mission like EULEX<sup>406</sup>, and, for the EC, to continue to insist that the process of “property determination” required a functioning, accountable judiciary and land registration system. This was “indispensable” for contract enforcement, attracting private sector investment and “to prevent fraud” (European Commission 2005:18).

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<sup>402</sup> International official (AI.18).

<sup>403</sup> Given that this highway was one of the main transport links for Kosovo’s import-dependent economy (Überti, Lemay-Hébert, and Demukaj 2014:432).

<sup>404</sup> In 2014, EULEX charged the ring of judges around Pristina’s court president with committing a criminal offence of “Issuing of Unlawful Judicial Decisions.” <http://www.eulex-kosovo.eu/en/pressreleases/0640.php> (last checked 13/06/2018).

<sup>405</sup> The indictment stated after the opening of the UNMIK investigation had opened the ring the Pristina court started declaring incompetence with regard to similar land cases (Press 2013).

<sup>406</sup> Anonymous source (AI.26), Pristina, 19.9.2016. EULEX would start operating December 2008. <http://www.eulex-kosovo.eu/?page=2,44,197> (last checked 13/06/2018).

## *Drivers of land registration from independence: 2008-2011*

There appeared to be little compliance with the EPAPs. This non-acquis conditionality seemed to achieve little immediately after Kosovo's declaration on independence in 2008. EU progress reports continued to highlight the now familiar institutional shortcomings in providing reliable information on land rights and adjudication in cases involving real estate. E.g. the European Commission (EC) noted that "property cases continue to be the bulk of the civil cases backlog before the courts, including approximately 21,000 compensation claims" (2010:18). According to the EC, land disputes that entered the courtroom were "often repeated due to irregularities, either in the judgment or in the proceedings" (*idem*). This situation was seen to further incentivize illegal construction and informal land rights enforcement (European Commission 2009:16; cf. 2010:26-7; next chapter).

However, by 2011, the EC reported an increase in registered, formal real estate transactions, which "indicated" increased "use of property as collateral". Indeed, some "5,364 mortgages were registered in 2010 and 2,712 in the first eight months of 2011." Moreover, the EC noted progress in that it took MCO fewer days to register a property transaction (European Commission 2011b:29).<sup>407</sup> This increased usage suggested that land registration services were becoming functional. Observers explained that it was especially improvements in the legal framework for land registration that led to this outcome. The confusing responsibilities and legal lacuna mentioned earlier were increasingly clarified after the GoK declared independence in 2008.<sup>408</sup>

Yet little evidence suggests that this change in Kosovo's land registration was driven by the carrot of EU accession or the EPAP's solutions for its land record problems. Xhevdet Shala, the KCA's legal expert, and Murat Meha, who was reappointed as KCA CEO in 2010), reported that the GoK had amended the 'Law on Cadaster' three times in order to achieve "harmonization with the acquis"

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<sup>407</sup> The EC had been paying attention to MCOs earlier. In 2006, the EC noted in 2006 that only 7 MCOs had so far been linked to the IPRR's digital register (European Commission 2006). It reiterated its concern that the MCOs lacked documentation, and that the land records had not been harmonized with central records at the KCA (European Commission 2009:16; cf. 2010). See appendix 1 for World Bank data.

<sup>408</sup> Local property rights expert (AI.25).

(Shala et al. 2015:1,12). But Shala could provide no detail when asked what this meant.<sup>409</sup> Murat Meha suggested that compliance with European and other international standards would facilitate access to donor resources to the KCA.<sup>410</sup> However, officials in the Ministry for Environment and Spatial Planning (MESP) responsible for applying for IPA(-II) funds contradicted this. Any project to support land governance reform that was not explicitly related to the INSPIRE directive and environmental aspects had limited chances for secure such resources from the EU.<sup>411</sup> Moreover, EU progress reports on Kosovo remained silent on a need for adopting land registration rules in line with the INSPIRE. Moreover, the EPAPs for Kosovo appeared to be forgotten.<sup>412</sup>

Instead, what appeared to drive land registration reform after independence was political recognition of the economic problems created by unreliable information on land rights. When the GoK declared independence, the KCA soon developed a long-term planning document for developing Kosovo's land registration system. This effort received GIZ assistance (through the Norwegian, Swiss and German government funding) and World Bank support. From this cooperation emerged the 'KCA Business Plan and Development Strategy' (from here on the Strategy). It aimed to not just make the "KCA and the MCOs strong and transparent institutions" but also to "contribute to the Government's goals to make Kosovo a member of the European Union and to fight corruption." (GoK 2008:3). Yet the EPAPs or other forms of (non-acquis) based external conditionality did not appear the driver behind the Strategy.

Rather, at heart, the Strategy recognized that by enhancing the "effectiveness of institutional structures for land administration [registration]...a country" can have "considerable impact on [its]...social and economic development." (GoK 2008:9,17). The document considered many of the long-standing obstacles that had prevented land registration reform since the beginning of Kosovo's

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<sup>409</sup> Interview Xhevdet Shala (NI.27), legal expert KCA, Pristina, 18.09.2015.

<sup>410</sup> Additionally, Meha indicated that meeting standards of non-governmental international bodies, like Eurogeographics and the International Federation of Surveyors (FIG) was at least as important as meeting EU standards for a "multi-purpose cadastre" (i.e. INSPIRE). Notes on speech Murat Meha, at the Multi-Purpose Cadastre Regional Conference, 15.06.2015.

<sup>411</sup> Officers responsible for EU integration and international cooperation (AI.4 and 5). Also see European Commission (2014), <https://wbcrti.info/object/document/14481> (last checked 13/06/2018).

<sup>412</sup> After 2012, no EPAPs were adopted. In interviews the author obtained no clear reason for this.

quadruple transition.<sup>413</sup> It also identified a number of key reform priorities, and a sequence to act on them. First and foremost, it aimed to clarify the legal framework for land registration, especially the laws on IPRRs and cadastral mapping (GoK 2008:9).

The question was whether the Strategy would secure the backing of governing elites. The sitting KCA CEO, Hamit Basholli sought out their “political support in building ... capacities and fulfilling all the legal vacuums, and other parts that would make this [Strategy and Business] plan realizable”.<sup>414</sup> Yet already in 2008 the Strategy was recognized by the GoK as a reform priority in the period leading up to 2011. What convinced the GoK to support it was that, according to Arsim Bajrami<sup>415</sup> the “cadastre” was now clearly seen as a foundational way in which “the state...guarantees economic development in the country”. Bajrami added that the GoK wanted the Strategy to be implemented to avoid situations where Kosovo’s land registration system would mainly serve narrow interests, like those of “surveyors”. Kosovo’s ‘Cadastre’ was to function more impersonally and thus enable “planning, real-estate registration, mortgages and safe transactions, while securing stable functioning of the banking system in the country, and creating a safe real-estate environment for investors.”<sup>416</sup>

Two new coordination bodies were established in 2009 to ensure the strategy was implemented. The inter-ministerial land administration body was one. Headed by the KCA, it comprised the Ministry for Public Services (MPS), the MESP, and the Ministry of Finance (MINFIN). The second was a donor coordination body for land governance policies (DCB). The DCB included the long-time donors like GIZ and the World Bank (see below), as well as others that made more incidental contributions.<sup>417</sup>

These two bodies now moved to coordinate and act on the Strategy’s priorities. The GoK had

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<sup>413</sup> See ‘obstacles to reconstructing the cadastre’ above.

<sup>414</sup> <http://www.zoominfo.com/p/Hamit-Basholli/1592416781> (last checked 13/06/2018).

<sup>415</sup> The Minister for Public Services (MPS) and co-drafter of the post-independence constitution <http://masht.rks-gov.net/en/ministri> (last checked 13/06/2018).

<sup>416</sup> <http://www.zoominfo.com/p/Hamit-Basholli/1592416781> (last checked 13/06/2018).

<sup>417</sup> Local property rights expert (AI.25).

already provided a foundation by ensuring the constitution guaranteed “the right to own property” (GOK Constitution 2008a). This became the bedrock for Kosovo’s new framework of laws governing registration of land rights. While some of the UN laws on IPRR and mortgages remained in place, the GoK began dealing with the legal lacuna that had not been resolved. For example, the GoK finally succeeded in getting a law on real property rights adopted in 2009, after it had been bogged down in parliament since 2003.<sup>418</sup> This greatly facilitated making the alienation, protection, creation and termination of real property rights legally recognisable across the GoK’s land registration system.<sup>419</sup>

Further, the hierarchy of directing land registration became more centralized. By 2010, prime minister Thaci used his constitutionally granted power to fire heads of executive agencies. This included the KCA. Basholli was dismissed as the KCA’s CEO “for poor performance of the Cadastral Agency and a lack of effective management.”<sup>420</sup> Whether this was the case is not clear, but the era of “frequent” changes of the CEO was over.<sup>421</sup> Murat Meha was reappointed as CEO and remained in the position since. He immediately pushed for a new Law on Cadastre, and this was adopted in 2011. This law empowered the KCA. Its broader aim was to make the KCA the only responsible authority, for gathering, processing and distributing cadastral data on a national level in computerized cadastral maps and IPRRs. The law already made the KCA the sole authority to license commercial and public cadastral surveyors. Moreover, the law removed MPS from the organizational chain, making only the minister for environment and spatial planning responsible for approving the KCA proposals to create or amend by-laws needed to reconstruct cadastral maps and IPRR.<sup>422</sup>

However, the Law on Cadastre did not prevent local mayors from appointing the heads of the

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<sup>418</sup> The intention behind the 2003 law was also to clarify rules around public, socially-owned, state-owned and private property rights (FRIDOM project 2008:7).

<sup>419</sup> Law No. 03/L-154 (2009). Apart from this law, a host of (by)laws were adopted for mortgages and systematic registration of property, inheritance, licensing etc.; not to mention operation manuals and guidelines for systematic registration and quality control of the data; and a catalogue for cadastral measurements. This helped institutionalize the new law on real property right Murat Meha (NI.26) and Xhevdet Shala (NI.27).

<sup>420</sup> This occurred in April 2010. [www.kryeministri-ks.net/?page=2,9,1270](http://www.kryeministri-ks.net/?page=2,9,1270); Article 76 <http://www.kuvendikosoves.org/common/docs/ligjet/2010-149-eng.pdf> (last checked 13/06/2018).

<sup>421</sup> Under Basholli, the GoK and KCA had noted the problem of “the frequent change” as a result of too much weight being given to the CEO’s “political views” (see above) (GoK 2008b:21).

<sup>422</sup> Murat Meha (NI.26). Art. 29, Law on Cadastre (2011). The law stipulates that the KCA’s CEO answers to the Minister at the MESP (art. 4, title 5). The MESP finances the KCA budget, which required approval by Kosovo’s national Assembly (art. 30). The KCA would decide the budgets for each MCO to maintain cadastral services (title 6). However, the government of Kosovo is responsible for covering the costs for establishing and reconstructing the cadastre, “as well as...revenues” (title 4). Securing information from the cadastre was not a free public service, but required persons paying for requested services (title 5).

MCO. Meha complained that this left a real possibility that mayors recruited individuals based on their support for their re-election, not merit-based criteria.<sup>423</sup> The CEO thus sought to take away and centralize this appointing authority from the mayors so to better coordinate the registration of land records within Kosovo's territory (Shala et al. 2015). That would achieve better “cooperation, coordination and relations” with the MCOs and make possible the achievement of the “highest priority task” of his mandate: to improve “the real property system in Kosovo” and thus “the operation of the real property market” (Meha et al. 2014:3,12).

The World Bank and EU evidently had no official position on this attempted centralization of land registration responsibilities.<sup>424</sup> However, some observers feared that centralization had already created a risk that the KCA's authority to award licences and surveying contracts could be abused for rent-seeking purposes.<sup>425</sup> Indeed, local media ran allegations that Meha awarded surveying contracts to his private company (Olluri 2012), and that his ownership of very high-valued land and real estate (as per his asset declarations) were difficult to explain for a senior bureaucrat. However, the director of the Anti-Corruption Agency, which collected asset declarations, reported that it no authority to investigate the accuracy of the declarations by senior officials.<sup>426</sup> The main body that could hold the KCA CEO accountable was still the office of the prime minister of the GoK.<sup>427</sup>

### *Institutionalizing land registration reform with World Bank support: 2007-2015*

In 2008, the KCA calculated that it must depend heavily on donor funding to implement its Strategy and institutionalize the laws it planned to adopt.<sup>428</sup> In subsequent years, the World Bank was most significantly involved compared to other donors.

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<sup>423</sup> Murat Meha (NI.26).

<sup>424</sup> Like in Bosnia, no evidence was found that the World Bank or the EU has an official policy on the separation of responsibilities in national land registration systems (see chapter 3).

<sup>425</sup> Unidentified contributor (AI.3).

<sup>426</sup> Hasan Petreni, Head of AKA, Pristina, 30.09.2015., KFOS, a local NGO, has recognised structural problems with verifying asset declarations by senior officials and politicians (KFOS 2014:9-11).

<sup>427</sup> The Law on Civil Service in the Republic of Kosovo (2010) states that although the candidates for CEO of the KCA are vetted and proposed by the minister at the MESP, it is the cabinet of the GoK that decides (Article 15.3). The prime minister had power to dismiss heads of executive agencies for “poor performance”: a qualification assessed by a “performance investigation commission” that is selected by the prime minister (art. 76).

<sup>428</sup> The KCA's projected budget for 2009-2014 to develop various aspects of Kosovo's land registration system far exceeded the annual KCB-allocated budget. For example, the budget allocations planned for 2009 were about double, and for 2010 triple the KCA's total 2007 KCB-allocated budget. (GoK 2008b:3,74-6).

The IFI had been involved in institutionalizing changes in Kosovo's land registration system continuously since 2007. In particular, the World Bank consistently provided resources to improve local abilities to map and register land records in a centralized and digitized land registration system. In 2007, a World Bank pilot project for cadastral reconstruction had started to encourage residents to register ownership in places where it was expected that there would be the greatest real estate activity. The project also refurbished the MCOs of Pristina and Ferizaj. By separating the working space of land registry clerks from the front office, the project intended to minimize the risk of rent-seeking. The World Bank considered the pilot a success: it noted how the MCOs in Ferizaj and Pristina had more consistently and accurately recorded changes to real estate.<sup>429</sup> Based on these "good examples" the technical working group of contributors, which included Pristina's MCO, began preparing for replicating the project on a country-wide scale (GoK 2008:9,24).

Shortly after declaring independence, in July 2008, the GoK secured membership of the World Bank and IMF. This opened a possibility for the GoK to request new resources and projects, yet it also meant it had to accept inheriting 231 million USD in debt that the former SFRY had owed (Kasapolli 2009; World Bank 2008a). The GoK was thus able to secure a 13.86 million USD loan from the World Bank for a Real Estate Cadastre And registration Project (RECAP) after the pilot project finished. RECAP made the World Bank central among the KCA's donors: not least because it became the largest contributor to the budget and officials' salaries of the KCA.<sup>430</sup>

RECAP effectively began in June 2011.<sup>431</sup> The aim of RECAP was to support the creation of a formal real estate market and to increase the number of real properties with secure land titles. It sought to do so by refurbishing and reorganizing more MCOs, and enhancing their competences to systematically register land records in Kosovo's land registration system. Secondly, it sought to improve the KCA's physical infrastructure and the overarching legal framework. A third area of

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<sup>429</sup> The performance of this project was mainly measured in terms of reducing the number of days it takes to register real property and increasing the number of people registering real estate (transactions) and mortgage(s) (World Bank 2013:iv-v; GoK 2008:12).

<sup>430</sup> In 2015, the World Bank paid out the salaries (300 euros on average) of 22 out of 45 KCA staff members. The GoK provided an annual budget of 200,000 euros, half of which went to salaries. Interview Afridite Selmani, Project Manager, KCA (NI.28), 25.05.2015.

<sup>431</sup> A month before the Assembly adopted the Law on Cadastre (2011) (AIP 2012:37).



improvement was (re)training experts and informing encouraging citizens of the advantages and possibilities of recording their land rights (World Bank 2014b).

By 2014 RECAP achieved progress in all three areas. The KCA succeeded in linking all MCOs to the central IPRR (except those in the north of Kosovo) and in refurbishing most MCOs. It also greatly enhanced the capacity of MCOs to digitize the IPRR and to record new changes in the KCLIS, so that any change made in one municipality would be visible in central databases as well. This thus also made it possible to see the number of real estate transactions registered each day at the KCA. Further, private surveyors were now working according to the same standards. Moreover, the wait to register a transaction in the IPRR was cut from thirty days in 2010 to eleven by 2014 (the average had been 40 days in 2006) (World Bank 2014b).

It was expected that these advances would allow RECAP to better monitor land transactions. Indeed, registered real estate transactions were expected to increase by ten per cent from 2011.<sup>432</sup> In 2011, the actual number of recorded real estate transactions far exceeded the projection, which could partially be explained by more active mortgage markets<sup>433</sup> (see figure 12 and 13).

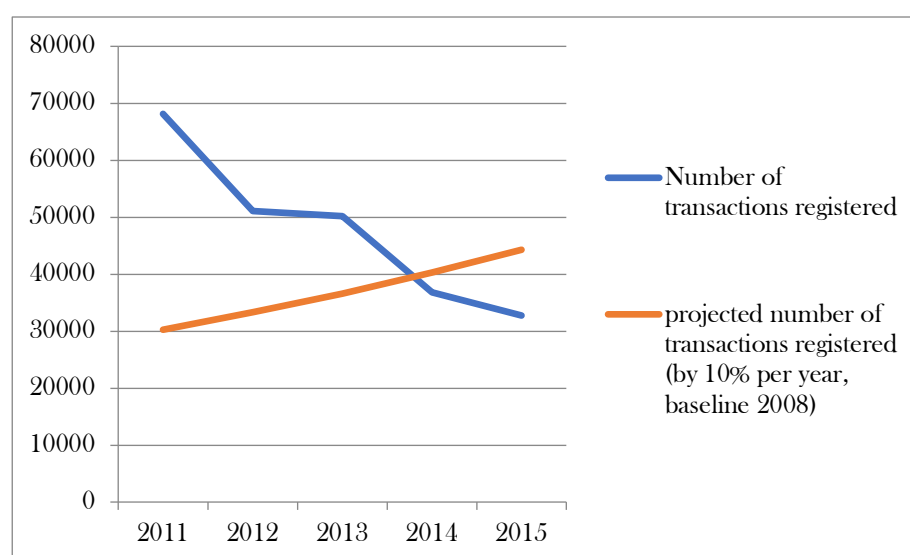


Figure 12: Total registered real estate transactions exceeding projections until 2014 (World Bank, Real Estate Cadastre and Registration Project (2015<sup>434</sup>)).

<sup>432</sup> <http://www.worldbank.org/projects/P101214/real-estate-cadastre-registration?lang=en> (last checked 13/06/2018).

<sup>433</sup> See above. More properties with recorded land rights allowed for more collateralization.

<sup>434</sup> <http://www.worldbank.org/projects/P101214/real-estate-cadastre-registration?lang=en> (last checked 13/06/2018).

Besides RECAP, other factors were potentially driving Kosovars to formally register real estate.

Firstly, there were improvements in access to legal recourse and arbitration should land rights come in dispute. From 2012, citizens had recourse to notaries to legally register property transfers, meaning they were no longer solely dependent on courts.<sup>435</sup> That same year EULEX and the Special Prosecutor's Office indicted the land cartel around Nuhi Uka, Pristina's municipal court president (Carney 2014). With more possibilities to register land titles, and real estate transaction fraud being punished, the risk of land rent-seeking thus appeared to diminish.<sup>436</sup> Secondly, Kosovo's small banking sector became confident enough to lower interest rates.<sup>437</sup> Mortgages thus became affordable, especially for individuals who were eligible for loans with long-term maturities.<sup>438</sup> Thirdly, the cash-based economy was suppressed. The GoK's anti-money laundering agency, the Financial Investigation Unit, began to push people to formally transact real estate, which it did in close cooperation with the banking sector.<sup>439</sup> Finally, other donors besides the World Bank made progress on their land registration projects. E.g. before 2011, Kosovo still lacked access to the GPS system of satellites that would allow surveyors to determine property boundaries exactly. Yet this began to change when a Swiss, World-bank financed project established GPS reference stations. This allowed the KCA to reduce the cost and increase the precision of surveying. This in turn allowed the KCA to lower its fees for providing land registration services (Meha et al. 2011:149-50), thus further incentivizing citizens to formally record changes in land rights.

Nevertheless, the number of total real estate transactions remained modest (see figure 12), and by the

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<sup>435</sup> An email exchange with Erdon Gjinoli, Director of the Chamber of Notaries in Kosovo ((NI.29), 12.10.2015) suggested that the "[c]reation of [the] notary system in Kosovo has eased or facilitated the transfer of immovable properties between contractors. It is worth mentioning that now the courts, which had previously been dealing with the certification of real estate sale contracts are released from this duty while on the other hand, contracting parties interested in a sales contract are no longer forced to wait for days to certify a contract." This was confirmed by expert observers: Nehat Ramadani (NI.30), Property Rights Expert, USAID, Pristina, 21.09.2015.

<sup>436</sup> Interview international official, Pristina (AI.24). Given EULEX's expiring mandate and manpower constraints, the extent of its countervailing power vis-à-vis attempts at land rent-seeking behavior may be limited (idem). By 2015 the court proceedings against Nuhi Uka's ring were ongoing <http://www.eulex-kosovo.eu/en/pressreleases/0640.php> (last checked 13/06/2018).

<sup>437</sup> This appeared to be a result of successive changes in capital requirements set by Kosovo's central bank (in 2012, 2013 and 2014) and the improving efficiency of Kosovo's small banking sector (10 banks). Interview official at Central Bank of Kosovo (AI.28), 25.09.2015.

<sup>438</sup> One interviewed banker explained the fall interest rates simply: bank followed this "market trend" to maintain competitiveness. Interview Pristina Banker 1 (AI.27), Pristina, 1.10.2015.

<sup>439</sup> A new money laundering law came into force in 2011. This required that banks report cash transactions of over 10k euros, and suspicious transactions (e.g. patterned cash flows, like 3000 euro at particular days of the month). GoK officials claimed this structurally reduced possibilities for tax evasion and money laundering, including in the construction sector. Kosovar official 1 (AI.29), Pristina, 23.06.2015.

end of 2014 it “stalled” at a level below the goal projected by RECAP (World Bank 2015:3).

Surveying techniques were being standardized, yet the practice of measuring the boundaries of properties twice often still needed to gain social acceptance, particularly in small communities. This appeared to increase the risk of land boundary disputes and errors in recording land rights.<sup>440</sup>

Further, the mortgage market remained miniscule compared to borrowing markets for (movable) consumer products (see figure 13). The post-war legacy and enduring pervasiveness of illegal construction helped explain the shortage of properties that had reliable land records. I.e. many buildings not being legalized explained why mortgaging was a small part of banks’ lending portfolio (see next chapter).<sup>441</sup> There was also a phenomenon of informal collateralizing, which made banks extra careful to conclude mortgages.<sup>442</sup> More fundamentally, although interest rates had fallen, they remained high. The idea of impersonal real estate exchange had not won universal acceptance, particularly in small rural communities. Moving into foreclosed properties could still be a taboo. Banks thus worried about recovering non-performing mortgage loans and adjusted their risk assessments and interest rates accordingly.<sup>443</sup>

Finally, the World Bank explained that the “progress” in increasing property transactions was modest “due to political uncertainty and measures against the informal sector both of which lowered the number of transactions.” (World Bank 2015:3). While “measures against informal sector” appeared to refer to collective actions taken against illegal construction (see next chapter)<sup>444</sup> the reference to “political uncertainty” appeared linked to the possibility of an imminent return of Kosovo’s land records in Serbia.<sup>445</sup>

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<sup>440</sup> Interview expert (AI.44), GIZ, Pristina, 29.5.2015.

<sup>441</sup> Pristina banker 2 (AI.30), Pristina, 23.09.2015. The interviewed banker estimated this was also the case for other banks (idem). Figure 13 gives further indication that this was indeed the case.

<sup>442</sup> Banks had occasionally granted borrowers mortgage loans via a guarantor, a close acquaintance or family member, who owned a legal title to a plot. In exchange the guarantor would informally ensure that he would receive a number of the apartments that the borrower intended to build on that land. If the construction and sale of the apartments had started, but at some point sales were too low for the borrower to service his or her loan, banks would need to evict apartment buyers who were often not aware that the land on which their apartments was constructed had been mortgaged to a bank. This risk made banks more reluctant to engage in this type of mortgage lending. Pristina banker 2 (AI.30), 23.09.2015.

<sup>443</sup> Both the barter system and the lack of acceptance of formal compliance mechanisms has affected the level of non-performing loans among banks, and enhanced their own reluctance in mortgaging real estate, especially among household borrowers. Anonymous source (AI.45), Pristina, 9.9.2015.

<sup>444</sup> See chapter 7.

<sup>445</sup> Interview international expert (AI.8).

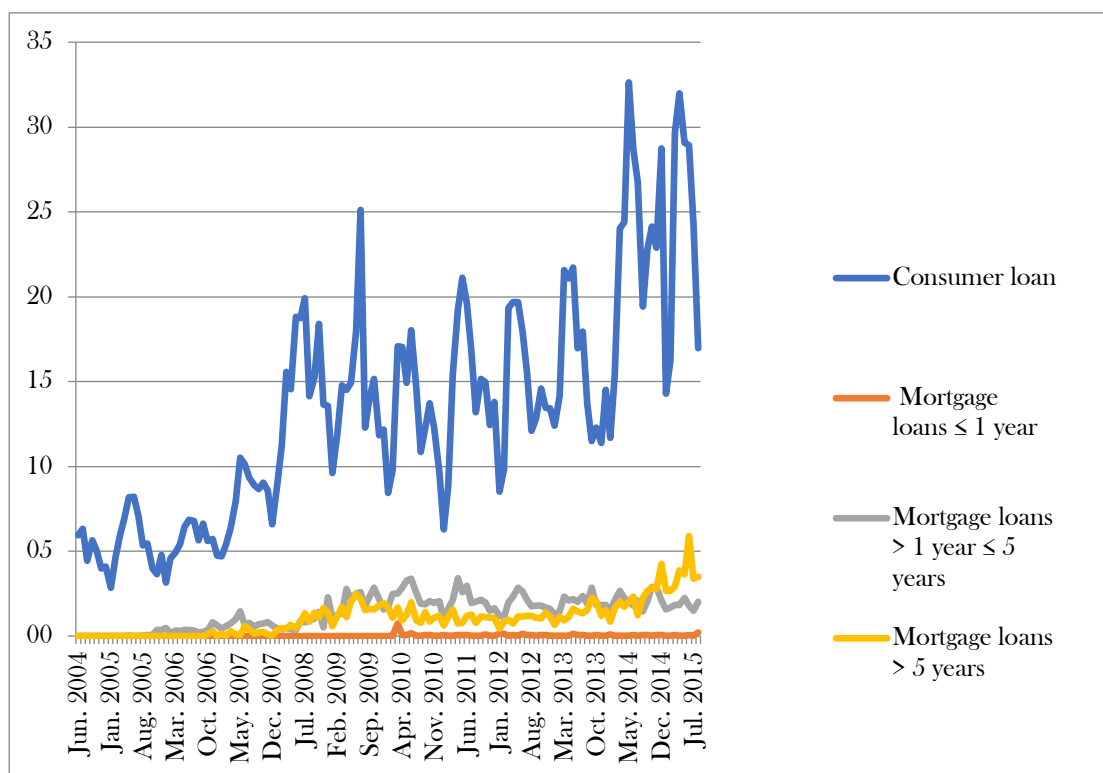


Figure 13: Consumer versus mortgage loans in millions of euros (Kosovo Banking Association 2015).

### *The return of the cadastre from Serbia, and uncertainty(?): 2011-2015*

As part of the EU-mediated Belgrade-Pristina Normalisation process, the EU Special Representative (EUSR) helped the GoK and GoS agree in 2011 on the former receiving copies of the old cadastre from the RSGA in Serbia (Bieber 2015b). The agreement was puzzling. For it could legitimately be asked why, given a new land registration system being institutionalized, the GoK believed it was necessary at all.

Murat Meha was thus “personally involved” in the negotiations. Asked why he believed the GoK had sought to bargain for its return Meha answered that it was simply because the data “belongs only to Kosovo.”<sup>446</sup> According to one international expert familiar with the arrangement, Serbia simply treated the old Kosovar cadastre as another bargaining chip in the larger Normalisation negotiations.<sup>447</sup>

<sup>446</sup> Murat Meha (NI.26).

<sup>447</sup> International expert (AI.8)

However, although the return had been agreed in 2011, no action followed (European Commission 2011b:29). A recommitment was made with the 2013 Brussels agreement. This specified the terms for implementation: the RSGA would first set up the infrastructure to scan the old cadastre<sup>448</sup>, while Kosovo was required to adopt a law for a new institution: the Kosovo Property Comparison and Verification Agency (KPCVA). The KPCVA was meant to replace the Kosovo Property Agency (KPA) (which had inherited the restitution tasks left by the HPD after Kosovo declared independence) once its mission of restitution was completed.<sup>449</sup>

The EC appeared eager to facilitate the return of the cadastre and to become impatient with the KPA. In its progress report for 2014 the EC pointed out that “[t]he funding of the KPA continues to be unsustainable” (European Commission 2014c:5,19). EU officials knew that the KPA had faced obstacles to completing restitution, including Serbia’s initial refusal to directly cooperate<sup>450</sup> and fraud involving minority-owned properties that the KPA still administered (OSCE 2007:8). But it seemed that for the EU, the KPA’s mission was mostly seemed over. For by 2015 the KPA had taken decisions on all restitution cases. Only, some still needed to be implemented. The KPA noted that delays resulted from complications in evicting individuals that had illegally constructed on land that was to be restituted. Implementation was further impeded by a shortage of financial resources received from donors.<sup>451</sup> Moreover, the KPA still administered twelve thousand properties. It remained an open question what would become of this property if the was KPA to be was closed<sup>452</sup>, as the EU-brokered Pristina-Belgrade Agreement demanded.

Meanwhile the EU(SR) persisted in insisting that Kosovo should adopt the KPCVA law<sup>453</sup>, yet a redrafted<sup>454</sup> version of that law was stuck in Kosovo’s parliament. The Vetevendosje opposition party insisted that the return of digital copies resembled a “legalized theft”. The party demanded that Kosovo was ought to receive the original, physical land records. Secondly it opposed the KPCVA-law

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<sup>448</sup> To this end the EU Delegation in Serbia offered to provide funding via an IPA project (EEAS 2014a).

<sup>449</sup> EU official (AI.7).

<sup>450</sup> Serbia agreed to cooperate when UNHCR agreed to act as liaison office (European Commission 2009:16; US Congress 2012:1603).

<sup>451</sup> The EC recognized the problem of the KPA’s financial resources (it noted alarmingly that the KPA’s “lack of financial resources [which] seriously affect[s] the rights of IDPs” (European Commission 2015:22)) but also contributed to the resource shortage according to one KPA official (I)(AI.22).

<sup>452</sup> KPA official 1 (AI.22).

<sup>453</sup> EU Official (AI.7).

<sup>454</sup> An earlier draft law was deemed “unconstitutional” in 2013 (Press 2013).

because it would perpetuate supervised independence (Gazeta Express 2015)(the new agency would be composed of 3 local members (appointed by the prime minister), and two members by the EUSR). Despite this opposition, the EUSR still urged the GoK to get the law adopted in a second reading. It was not simply for the sake of the Normalisation Agreement, but also because the EU believed it would improve the land registration system and legal security. “An intended side effect” was that it would assist “the fight against corruption” by making “the process [of land record clarification] more transparent.”<sup>455</sup> I.e. the return of the cadastre would help access and clarify information about land rights, and thus inhibit opportunities for rent-seeking.

Critical observers found this logic hard to understand. This was because the KPCVA law envisaged that only a select group of officials would be allowed to access the land records of old ‘cadastre’. I.e. the records would not be made public. They would compare these old records with those of the KCLIS, and when done, citizens could access the compared and verified records. The reason, according to government officials, was that non-legal experts would not understand the old documents. However, according to an international expert familiar with the proposed KPCVA law, this was a sophism.

Their real reason was that the old cadastre, if made publicly accessible immediately, would reveal details about how its records were manipulated since the beginnings of quadruple transition, and that that might be highly inconvenient for certain members of the GoK.

However, since the KPCVA would have to verify and compare records for every single one of about two million individual parcels in Kosovo’s territory, it could mean a long period of uncertainty for those who lacked access to the KPCVA’s verification process, which was everyone else. According to the interviewee, this created a real risk that this arrangement would create so much uncertainty about the validity of land records in Kosovo, that it could undermine its fragile formal real estate market:

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<sup>455</sup> EU Official (AL7).

It's been 15 years already [since the loss of the cadastre]. It's possible that someone bought an apartment from someone who falsified ownership in the documents, and the second buyer would have no idea of this. If the verification process shows that the original owner was wrong with these documents, then...what will happen? [What will happen] with people that are [thus] uncertain about their property status?"<sup>456</sup>

In fact, the World Bank country director believed such uncertainty had already spread. He sent a letter to the office of the prime minister. In it, he urged him to review the KPCVA law, as it posed a "danger to the property market in Kosovo if it goes as...planned."<sup>457</sup> Yet when asked about this danger, that the return of the old cadastre might make citizens reluctant to transact real estate, the prime minister's subordinate, Ferat Shala answered as follows: The GoK would account for expediency and transparency in recovering the old cadastre, yet press on with the law, "no matter if someone was afraid or not".<sup>458</sup>

### *Concluding remarks*

This chapter showed that recovering an authoritative land registration system was a central and enduring challenge for domestic and external actors in Kosovo. With the cadastre in Serbia and remaining records unreliable, two processes attempted to solve this problem. One involved recovering the cadastre from Serbia. Yet this process was long stalled. The other process involved reconstructing a land registration system with the fragmented authority and pieces of information about land rights that remained in Kosovo.

The chapter focussed on the latter process, which at first saw limited progress. An incomplete legal framework and limited domestic capacities, as well as structural opportunities for rent-seeking, impaired the local recovery of Kosovo's cadastre from the outset of peace. In the mid-2000s, neither UN standards nor EU conditionality appeared to drive land registration reform. Continued land

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<sup>456</sup> International expert (AI.8).

<sup>457</sup> Idem.

<sup>458</sup> See epigraph. However, at the end of 2015, the GoK did acknowledge and sought to address the uncertainty about land rights in a new "national property rights strategy". Nehat Ramadani (NL.30). This was finalized by the end of the 2016. [http://www.kryeministri-ks.net/repository/docs/National\\_Strategy\\_and\\_Annexes\\_ENG.pdf](http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_ENG.pdf) (last checked 13/06/2018).

record opacity appeared to contribute to situations of unregulated land access, including informal expropriation and land record manipulation.

However, by 2011, a small formal land market had emerged. This appeared to be largely a result of the GoK at independence recognizing the economic problems caused by weak land registration. It worried that this greatly inhibited Kosovo's ability to attract investment in real estate. The GoK prioritized and supported a legislative reform strategy that sought to institutionalize and modernize the land registration system. It did so incrementally, by closing old legal lacuna, centralizing land registration authority, and securing consistent and significant donor support, mainly from the World Bank. Trial and error, and continued donor support, appeared to make institutionalization possible.

Yet obstacles to further progress endured. For instance, Kosovo's land registration authorities depended on other land governance actors resolving the wide incidence of illegal construction: the subject of the next chapter. Additionally, uncertainty seemed to re-emerge as the EU and GoK were keen on returning Kosovo's old cadastre from Serbia. The risks of this seemed ill-considered: that the return might not just shake the hard-won public confidence in the reliability of information about land rights for each and every parcel in Kosovo, but also the country's fragile land markets.



# 7

## Ending Illegal Construction in Pristina

“Illegal construction is rampant. The government has made efforts to complete the existing legal framework in order to enable the municipalities to address the issue. Delays in the development and approval of new spatial and urban plans have created additional difficulties in this regard.”

EU Progress Report on Kosovo (2005)

“Everybody agrees that there is no more illegal construction in Pristina...[No] big buildings [are] being built...with no permit [sic].”

Sphend Ahmeti, Mayor of Pristina (2015)<sup>459</sup>

In the days that followed the withdrawal of Yugoslav forces from Kosovo in June 1999, many refugees and migrants were attracted to its capital, Pristina. The city had suffered relatively little physical war damage. It also had an expanding job market, since it became the hub of international administrators, peacekeepers and the new provisional government. Moreover, on its periphery lay private and socially-owned farmland, abandoned.

A construction boom took off in and around Pristina. Housing, corporate and even administrative construction failed to conform to the Yugoslav-era land use regulations that local administrators and UNMIK inherited. Socially-owned agricultural plots were informally squatted, subdivided and sold. This boom pushed the city beyond its boundaries. Also the city centre became densely built: its land evidently being the most highly valued.<sup>460</sup> Many built without formal permission; others were believed

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<sup>459</sup> Interview Sphend Ahmeti (NI.31), mayor of Pristina, Pristina, 20.05.2016.

<sup>460</sup> (Tawil 2009:15–16; Vöckler 2008:49–50); Agron Beka (NI.25).

to secure permits through informal channels. This situation of unregulated land access became locally known as illegal construction. It continued for years and years (see first epigraph).

Fifteen years later the mayor of Pristina suggested that in his city the long illegal construction boom had come to an end; at least in so far as big buildings were concerned (see second epigraph). Indeed, Kosovo's construction sector (which is generally believed to rely on demand in Pristina) noticed a sharp reduction in (illegal) construction activity.<sup>461</sup> Some observers speculated that the sudden burst in emigration during the winter of 2014 resulted from construction workers being laid off as a result of the city's measures against unpermitted construction.<sup>462</sup> Also the World Bank's RECAP project registered a drop in the number of formal property transactions and partly attributed it to "measures against the informal sector" (World Bank 2015:3).

Yet other changes in land use governance had occurred as well. Kosovo had improved its DBI ranking for "dealing with construction permits" by cutting the number of days needed to obtain a permit by half (see Appendix 1). Further, a process of legalization had started, and with its first phase complete by June 2015, 352,836 buildings were registered as unpermitted structures.<sup>463</sup> More than an eighth of this number was registered in Pristina.<sup>464</sup> Still, external observers like the World Bank remained far from certain that the process of ending illegal construction would progress further (World Bank 2015:3).

This chapter traces the origins of processes to change land use governance in Pristina and this uncertain outcome. Its focus on the main actors who were seen to be involved in reshaping local laws and capabilities to regulate land use rules; via changes in spatial planning, construction permitting and legalizing illegal construction.

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<sup>461</sup> Jobs in the construction sector had constituted 11.2 percent of the labour force in 2002. By 2013 this was 11.4 percent, but by 2014 the estimate had fallen to 10.9 percent (European Commission 2015a:66).

<sup>462</sup> A view held by the political opposition to Ahmeti's government in the municipal assembly. Sphend Ahmeti (NL31). The view was also held by Elvida Pallaska, urban planner (speaking on her own behalf) (NL32), Pristina 30.09.2015.

<sup>463</sup> This is what had prompted Ferat Shala to declare that all structure in Kosovo now have a legal foundation in Kosovo's land registry (see epigraph part III).

<sup>464</sup> This was the first phase of a legalisation process that had taken place between November 2014 and June 2015 (Agani 2015).

## *The origins and beginnings of the illegal construction boom: 1948-1999*

The post-1999 boom in illegal construction was influenced by several legacies. One related to draconian Yugoslav-era re-design of the city. When the SFRY determined that Pristina had to become a modern administrative hub for Kosovo, youth brigades began demolishing Ottoman-era neighbourhoods and buildings under the slogan “destroy the old, build the new” (ESI 2006a). As the former Ottoman entrepot was turned into rubble and then rebuilt; Ramiz Sadiku, an SOE construction company, became the city’s largest employer (ESI 2006b:2 cf. Palairt 1992). This helped the population quintuple between 1948 and 1981.<sup>465</sup> Yet when federal resources dried up in the eighties, construction slowed and unemployment rose (ESI 2006b). Meanwhile, like elsewhere in Yugoslavia, informal settlements had emerged, particularly on Pristina’s (southern) peripheries (AIP 2012:37). Kosovar officials commented that the legacy of destruction was that residents “inherited a town without an identity”<sup>466</sup>. That lowered the social constraints on engaging in squatting and increased the social acceptability of building illegally.<sup>467</sup>

Additionally, the city was unique for attracting so many urban migrants after June 1999 compared to other cities (see table 7 below). This could largely be explained by the physical damage caused by the war. The capital suffered little physical destruction of buildings compared to cities like Prizren and Gjakove. Overall a quarter of Kosovo’s housing stock had been destroyed (AIP 2012:45).

To boot, housing preferences of the young Kosovar Albanian population appeared to change: many left overcrowded, larger family homes to build houses for smaller households.<sup>468</sup> Further, with Yugoslav authorities out, the Albanian diaspora looked to return to Kosovo; and many recognised opportunities in retail and import-oriented industries in anticipation of the growing international presence around UNMIK’s mandate (ESI 2006b; Vöckler 2008).

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<sup>465</sup> A time during which forty-eight per cent of the total capital expenditures allocated by Belgrade to Kosovo were received by Pristina. This is when many socially-owned companies, housing projects and a university were built in the city (ESI 2006b).

<sup>466</sup> A Kosovo official quoted in ESI (2006b).

<sup>467</sup> One spatial planner suggested that the lack of a historic conservation plan “lead [sic] to an increased detachment of people from the meaning of cultural heritage.” (Jerliu 2014).

<sup>468</sup> Local architect Visar Geci interviewed in Vöckler (2008:55–56).

	In-migration	Out-migration	Net migration	2006-2011 In-Migration	2006-2011 Out Migration	1998-2003 Net	Total Net migrants
Gjakove	4,9	14,3	-9,4	0,5	2,6	-2,1	-11,5
Gjilan	4,7	14,1	-9,4	1,0	0,7	0,3	-9,1
Mitrovica	9,6	16,3	-6,7	0,9	7,1	-6,2	-12,9
Peja	16	8,2	7,8	3,7	0,4	3,3	11,1
Prizren	6,4	11,8	-5,4	2	1,5	0,5	-4,9
Pristina	36,6	14,11	22,5	8,1	1,1	7	29,5
Ferizaj	10,6	10	0,6	1	3,8	-2,8	-2,2

Table 7: In- and out-migration in Kosovo's major cities (in thousands) 1998-2003; 2006-2011 (Krasniqi 2011).

Finally, Yugoslav authorities left behind a rudimentary institutional framework to govern land use (UNMIK decreed that only discriminatory laws were to be voided). This included a city-level urban plan from the 1980s, and thirty neighbourhood-level regulatory plans. These were the formal basis for granting (or denying) construction permits.<sup>469</sup> Some areas lacked regulatory plans, however. Others were several decades old. Regulatory plans were therefore less likely to reflect the reality of land use. This lack of detail in land use regulations gave city administrators a legal pre-text to postpone decisions on providing citizens construction permissions (ESI 2006b:3; AIP 2007:3). I.e. the former could tell the latter to wait for an update of the relevant regulatory plan. This did not seem to be sustainable, especially as demand for new residential and commercial space exploded.<sup>470</sup>

The first new city administrators to establish themselves after conflict were local 'communes' that had been organized for different cities around Kosovo in June 1999 by Hashim Thaci, the political head of the KLA. Thaci had begun outlining a governing framework of provisional institutions three months before, and by June 1999 sought to establish it with the help of KLA-commanders cum commune presidents. These communes included urbanism, planning and property departments. However, since its representatives were to seen to collect "donations" from locals in a way that was considered arbitrary, the communes' authority appeared to be diminished (Janssens 2015:101,104).

<sup>469</sup> Agron Beka (NL25); (AIP 2007:3; ESI 2006b:3).

<sup>470</sup> Interview Kosovar official (AL31), Pristina, 25.09.2015.

Next to arrive in Pristina was the heavily-armed Kosovo Force (KFOR). Yet KFOR's immediate concern was securing Kosovo's borders (Jansens 2015:100-1) and "building up" its presence in Kosovo (UN Secretary General 1999:9), not enforcing land use regulations. UNMIK could not step in to fill this gap either. It allegedly lacked the resources, with "only a few hundred civilian administrators on the ground" who were "mostly concentrated" on building (UNMIK's) organizational presence, providing humanitarian assistance and coordinating the arrival of hundreds of "international non-governmental and private organizations" (Jansens 2015:104). UNMIK thus lacked capacity and thus scope to enforce land use regulations in 1999 (Vöckler 2008:9).<sup>471</sup> This was confirmed by local observers at the time. Allegedly KFOR and UNMIK hardly, if ever confronted illegal construction. Even when present, they were prone to "keeping their eyes closed."<sup>472</sup> Social stability was their priority and they saw risks to their safety in stopping Pristina's new residents in illegal construction: namely that they would "draw the wrath of the local population on themselves" (Vöckler 2008:43).

Indeed, transgressing land use regulation was not just possible, but for many a necessity, as a minister for environment and spatial planning would later acknowledge in hindsight: there was an all-overriding "desire of the population to improve and rebuild their properties, to build places for economic activity and generally to improve their circumstances and life" (Agani 2015).

Thus in June 1999 Pristina's expanding population secured residential and commercial space informally and land and buildings in the city were put to a new use without regard of formal land rights or land use regulations.

### *A new informal status quo, governed by "private interests": 2000-2007*

However, the acquiescence of Pristina's new authorities to illegal construction was not universal. The director of Pristina's Department of urbanism, planning and reconstruction [from here on the

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<sup>471</sup> This would remain so until at least 2001, which is when UNMIK police declared itself "fully operational" (Tawil 2009:33).

<sup>472</sup> Interview Member of the Kosovo Association of Municipalities (AI.32), Pristina, 21.5.2015.

Urbanism Department<sup>473</sup>], Rexhep Luci, launched an attempt to reform land use governance in order to better regulate construction (ESI 2006:3). Luci's position was a potentially powerful one in Pristina's land use governance framework. He aimed to use it to develop and propose a new urban plan, so to enable municipal permitting decisions. In September 2000 he participated in a conference that aimed to create "guidelines for development" and a new "vision" for Pristina's land use governance in the period up to 2005. The vision would be a guide for developing a new urban plan. With UN and municipal officials in attendance, and he allegedly declared that: "I will not allow illegal construction and destruction of Prishtina" (Koha Ditore 2013).

Luci was assassinated immediately after leaving the conference. The perpetrators were never found. Yet efforts like Luci's, which intended to clarify and formalise land use regulation, posed a risk for a range of actors for whom the situation of unregulated land access that had emerged in June 1999 "was actually advantageous" (Vöckler 2008:11,129 cf. ESI 2006b:3).<sup>474</sup>

Such actors included private developers. Many of them had access to construction materials, but lacked financial resources. Through barter agreements they had been able to construct individual residential buildings. For instance, e.g. a formal title holder would permit a developer with construction materials to build new structures on top of old socialist-era buildings in exchange for an apartment.<sup>475</sup> Additionally, family or clan-based social networks with access to savings or remittances had been able to informally purchase and build, often on socially-owned agricultural land on the city's periphery. Finally, there was the "building mafia" (Vöckler 2008:10): developers who had built in central locations in the city, and who were alleged to funnel proceeds from illicit trafficking or tax evasion through local real estate.<sup>476</sup>

The lack of formal land use regulation increased citizens' dependence on informal agreement.

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<sup>473</sup> This is for the sake of simplicity. The department for urbanism frequently changed names over the course of Pristina's post-war transition.

<sup>474</sup> Florina Jerliu (NL.1) highlighted that Luci's murder was not untypical: the lack of law enforcement in the early post-war situation opened possibilities for many other prominent public figures being killed with impunity. Amnesty International reported 454 murders in 1999 and 246 in 2000 (according to Jansens (2015:108).

<sup>475</sup> Pristina banker 2 (AI.30) cf. (Vöckler 2008:50). See last chapter.

<sup>476</sup> Kosovar official 1 (AI.29). On organized crime/smuggling see networks see e.g. Rozen (1999); and Tawil (2009:9).

This in turn raised the risks of land disputes. Urban migrants sometimes resorted to traditional forms of dispute settlement that they brought from Kosovo's smaller municipalities. Typically, though, these were ineffective in a rapidly urbanising environment where social life atomized. As formal law enforcement remained weak, physical violence was often a way to settle these disputes instead.<sup>477</sup>

More moneyed private developers had means available to avoid such (violent) resolutions. They could establish or maintain informal links to formal adjudication authority, in particular, the president of the municipal court of Pristina, Nuhi Uka (see last chapter). He was allegedly invariably financially involved in transferring, adjudicating and clarifying land rights. As one interviewee put it: "the court system was completely controlled [by him]. Nuhi Uka was like a God. No one [in Pristina] could get around him."<sup>478</sup> Mechanisms that could countervail and control and keep the court's power in this regard accountable seemed absent (Tawil 2009:25). Some went so far to say that Pristina was "governed *only* by economic factors and private interests" in this period [emphasis added] (Vöckler 2008:11,28).

Luci's murder was seen to have "firmly established an atmosphere of impunity in which illegal construction of all kinds could take place" (Borger 2014 cf. Tawil 2009:15): In response to the murder, UNMIK issued a new Kosovo-wide regulation, nicknamed the Rexhep Luci Regulation. This required "[a]ll construction" to have "a construction permit issued by the competent municipal authority". It also first raised the possibility of legalizing structures that had been built between the 10<sup>th</sup> June 1999 and the 24<sup>th</sup> of September 2000.<sup>479</sup>

Institutionalizing the Luci law was complicated with so many actors having interests in a weak state of land use governance. Furthermore, with Luci, a genuine political will to confront this problem seemed to have also disappeared.<sup>480</sup> Municipal authorities still echoed his "urgent need for a new urban plan for Pristina", but in reality allowed the rules-in-form in land use governance to become an

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<sup>477</sup> See Rozen (1999) and Tawil (2009:9:20-3); and Vöckler (2008:47).

<sup>478</sup> Anonymous source (AI.26). Uka would be acting court president between 2000 and 2010. This is the same court president who would be charged by EULEX (after 2010) for engaging in land transfer fraud (see last chapter).

<sup>479</sup> UNMIK Regulation 2000/53 "AKA the 'Rexhep Luci Regulation on Construction', section 2 and 4.

<sup>480</sup> A Guardian article called Luci "[t]he last man to try to stop illegal building" (Borger 2014).

empty shell. This accusation could also be placed at the feet of UNMIK officials or KFOR troops, who continued to sanction land use violations weakly (ESI 2006:3-4).

Thus a new informal status quo had emerged that few seemed to have reasons to change. For most the potential benefits of engaging in illegal construction outweighed its costs. In politics, Luci's assassins had "buried every urban discourse" and "fear" stopped discussions of possible change, according to the daily newspaper *Koha Ditore* (2013).

This status quo however did not mean that the Urbanism Department had become irrelevant. Its officials retained formal authority to issue permits, authorize legalization and develop regulatory plans. Legal lacunas and the lack of functional accountability mechanisms appeared to augment the Department's scope for informal action, and to facilitate land rent-seeking. Both seemed possible in several areas.

Firstly, the Urbanism Department officials could first informally allow building without a formal construction permit and subsequently demand "renovation permits". For instance, a "building inspector would suddenly 'discover' [an] illegal building" and demand a "fee" which could be "couple thousand of euros" (Vöckler 2008:52) as compensation for the fees that the municipality had missed earlier. A knowledgeable interviewee estimated that these permit fees constituted an important part of Pristina's budget.<sup>481</sup>

Secondly, the Urbanism Department wielded authority with which they could threaten demolition and promise legalization. On the one hand, the Department formally declared that it intended to tear down "all of the illegal buildings".<sup>482</sup> Yet it was evident that this was unrealistic given the lack of enforcement capacity.<sup>483</sup> On the other hand the Luci law had created the possibility that one day the municipality would initiate a process for legalizing buildings without a building permit (as the Luci law

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<sup>481</sup> Unidentified contributor (10.06.2015).

<sup>482</sup> As Lulzim Nixha, urban planning director quoted in Vöckler (2008:10)

<sup>483</sup> By 2005, Pristina had just three building inspectors, a driver, a head of demolitions plus 13 administrative staff. Demolitions frequently required "police supervision", a costly process given an annual budget allocation of 30,000 euros for demolition work. The MESP supervised the municipal inspectorates, but itself had "only one inspector" (ESI 2006:3).



had suggested). While legalization seemed initially unlikely to occur, it became ever more likely as the private and public costs of continuing illegal construction increased. As the details and standards of this possible legalization process were vague, there was a basic uncertainty about which buildings would become eligible for legalization, and which for demolition. This tenuous situation created incentives to keep close connections with the Urbanism Department, as a kind of insurance policy.<sup>484</sup>

Larger construction firms who wanted to have the security of a formal construction permission, or who simply wanted to avoid the costly process of paying for such permits, were especially vulnerable to being forced to pay additional (informal) fees. This was possible since the Urbanism Department was poorly constrained by checks and balances. For instance, its officials were seen to require larger firms to accept (expensive) architects for their projects. Often these were personal contacts of officials in the Urbanism Department.<sup>485</sup> Thus even a well-connected construction company was condemned to establish and maintain links to officials in the Department.

While only a score of permissions were issued annually (see figure 14 below) and very few demolition orders were issued (and even fewer executed), it was possible to see the Urbanism Department's "head of inspection driving a 48.000 euro car with a 400 euro salary". According to Pristina's mayor from 2013, this was the fruit of "networks...between some people in the municipality['s bureaucracy] and the construction sector, especially those who built illegally".<sup>486</sup>

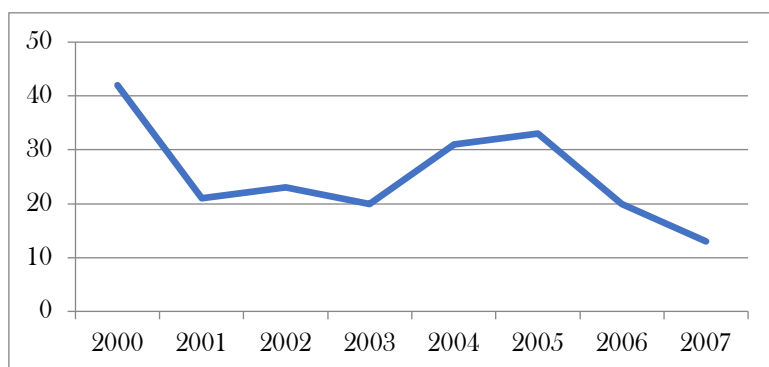


Figure 14: Total construction permits issued in Pristina 2000-2007 (Urbanism Department Pristina 2016).

<sup>484</sup> Interview with Visar Geci in Vöckler (2008:51).

<sup>485</sup> Idem.

<sup>486</sup> Sphend Ahmeti (NL31).

A possible change in this status quo emerged in 2002. The PISG (with the support of UN-HABITAT) had established the Institute of Spatial Planning at MESP to support local level planning (Hasimja and Krasniqi 2012:58). A year later a new Kosovo-wide law on Spatial Planning was approved by the UNSRSG. This law retained the Yugoslav idea of regulating land use through urban and regulatory plans, but required their revision every 5 years.<sup>487</sup>

Pristina seemed to respond to this requirement by launching an international tender for “a comprehensive city master plan” in late 2003. By early 2004 a Kosovar-German consortium of planning institutes finished a new urban plan (called the “Strategic Plan-Urban Development Plan of Prishtina 2004-2020”) which was adopted in the municipal assembly in July 2004. The Plan’s main goal was to re-designate and make available 2,040 hectares of municipal land for residential, public and commercial construction. It meant that the city’s built area would expand by nearly fifty per cent.<sup>488</sup> The aim was to provide space for a city that by 2020 was expected to have grown to 650,000 inhabitants. However, this projection appeared to not have been based on scientific measurement. Instead, it relied on a ballpark estimate, used by UNMIK and the OSCE (see e.g. OSCE (2005b:1)), that post-war Pristina had become a city of half a million inhabitants by 2004. However, information on public water usage and household surveys suggested that Pristina was still a city of around 225 thousand (ESI 2005:4-7). Nevertheless, the Strategic Plan was adopted, which gave the municipal authorities a responsibility to change land use regulations accordingly (Pristina municipality 2004:31,98).

The strategic plan proved difficult to institutionalize, however. Firstly, the city government lacked resources to gather reliable information about reality of land use. The privatization of public utility companies made it more difficult to gather information that could be used to assess the incidence of e.g. illegal water tapping (Hasimja and Krasniqi 2012:58). Additionally, municipal cadastral maps were missing (see Jerliu (2014) and previous chapter).

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<sup>487</sup> Law on Spatial Planning (no.2003/14). Articles 9-10, 13-15.

<sup>488</sup> The last urban plan (from 1988) had planned Pristina to entail an area of 4335 hectares for 225.000 inhabitants. General Urban Plan of Pristina-PPU(2000). From Strategic Plan-Urban Development Plan 2004-2020 (European Commission 2005b:18).

Secondly, other institutional rule changes seemed to unintentionally counteract the institutionalization of the strategic plan and to enhance the informal status quo. In 2004 a new construction law was proclaimed by the UNSRSG, after the Kosovo Association of Municipalities (AMK) had raised concerns about the extent of “unregulated building development”.<sup>489</sup> The new construction law named a list of buildings that could waive the requirement of obtaining a “construction permission”, e.g. if the building was used “exclusively for agricultural purposes”. To verify this required resources that Pristina’s municipality lacked. Moreover, the new law required that the Urbanism Department involve a reviser<sup>490</sup> in construction projects. This person was chosen by the Department officials to “assist...and guide...the observation of all regulations under the law [and] check...the technical details of the design and the construction.”<sup>491</sup> However, since no bylaws were adopted for how revisors were to be authorized, officials’ informal leverage over construction projects was enhanced, which they could use to enable rent-seeking in new ways.<sup>492</sup>

The strategic plan thus did little to change the informal status quo in land use governance. Pristina continued to have very few, and even a declining number, of building permits in the years before independence (see figure 14 above).<sup>493</sup> Unpermitted buildings rose at a rate of ten a day the year after the strategic plan had been adopted. Peripheral areas with much socially-owned agricultural land that lacked regulatory plans seemed especially vulnerable to squatting (Krasniqi 2012:94; Vöckler 2008:11). However, exact information about the scope of the enduring encroachment problem remained unavailable at this time.<sup>494</sup>

### *External and civil society responses to illegal construction in Pristina: 2005-2007*

In 2005 an EU progress report sketched a bleak situation as far as illegal construction was concerned

<sup>489</sup> The municipality of Pristina was also represented (AMK 2004).

<sup>490</sup> Law on Construction No. 2004/15) art 17, 23.2. [http://mmph-rks.org/repository/docs/2004\\_15\\_en\\_494992.pdf](http://mmph-rks.org/repository/docs/2004_15_en_494992.pdf) (last checked 13/06/2018).

<sup>491</sup> Law on Construction art 23.2. [http://mmph-rks.org/repository/docs/2004\\_15\\_en\\_494992.pdf](http://mmph-rks.org/repository/docs/2004_15_en_494992.pdf)

<sup>492</sup> Knowledgeable observers noted that the reviser rent was consistently “farmed” by architects. Architects who were selected by authorities could outsource the rent to other individuals who lacked any specialized/relevant knowledge whatsoever. Unidentified contributor (AI.3). A person who was involved in the formation of the law and the reviser, noted that the provision had no nefarious intentions (it was drafted in cooperation with the Royal Institute of Architects (UK)). She agreed that the law did fail in practice. Florina Jerliu (NI.1).

<sup>493</sup> Several local observers were under the impression that no building permits were issued before 2005 at all (Vöckler 2008:52).

<sup>494</sup> Florina Jerliu (NI.1).

(see epigraph). It noted however that “informal settlements...have been almost completely mapped” and that “Work is undergoing on an action plan for their regularisation” (European Commission 2005b:18). Moreover, a KSIP goal was adopted in the EPAP of 2006 in which Kosovo prioritised resolving the illegal construction issue. The PISG and municipalities were to:

“Complete adoption of[,] and implement a non-discriminatory...regulatory framework for spatial planning at central and municipal levels, which adequately takes into account...dealing with illegal constructions” (UNMIK and PISG 2006:50,62,64).

The EPAP of 2006 also included the UN Standards on the need for public awareness on the “consequences of illegal construction” and a “Law on Illegal Construction”. These two goals were now made explicit requirements for further EU integration.<sup>495</sup> Kosovo seemed to comply with this non-acquis-based conditionality. The Law on Treatment of Illegal Construction and made amendments to the Law on Land Use Planning were adopted in December 2006 and March 2007 respectively. A “Kosovo-wide information campaign against illegal occupation” was also being “implemented”, according to the European Commission (2007b:17).

A Pristina-based civil society group had just launched such an information campaign.<sup>496</sup> This group, Archis Interventions Prishtina (AIP), was founded in 2005 and had started as an expertise-sharing network. It sought to link the knowledge of the private sector with that of city administrators. The aim was to develop “an inclusive strategy” to resolve the illegal construction problem. More specifically, AIP intended to convince private parties to accept that regulating land use was a necessity, while persuading authorities that top-down solutions were unlikely to be institutionalized (AIP 2007:4; Vöckler 2008:132). As Kai Vöckler, who was involved in AIP, put it:

“‘Master plans’ that attempt to treat complex layers of political and economic problems in the same way (comprehensive planning) are of no significance” (Vöckler 2008:134; cf AIP 2007:4).

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<sup>495</sup> “Increase public awareness on consequences of illegal construction.” (EPP 35) and “[a]dopt and promulgate the Law on Illegal Construction;”(EPP 35d); (UNMIK and PISG 2006:64)

<sup>496</sup> It is not clear if this is the information campaign that the EC referred to.

Instead, the “key” to taking collective action on illegal construction in Pristina was “communication...about [its] problems.” That meant creating a public debate “with the assistance of local media” and to subsequently “institutionalize negotiations” about a solution.” (Volcker 2008:132).

To do so, AIP wanted to have a clear picture of the illegal construction problem. By mapping illegal water connections in the capital<sup>497</sup> it found that seventy per cent of the buildings had been built without a permit.<sup>498</sup> AIP’s mapping was (evidently) the first scientific attempt at gaging the extent of the illegal construction phenomenon since the boom began in June 1999 (figure 15). However, no evidence suggests this initiative arose as a result of the EPAP (or Vienna Declaration (see chapter 2).

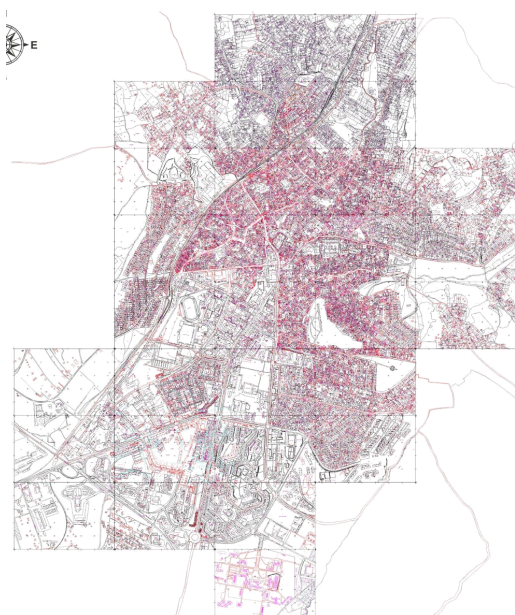


Figure 15: AIP map showing the extent of informal connections to water supply in 2004.<sup>499</sup>

### *Mayor Mustafa’s response: 2007-2013*

The AIP’s map indeed caught local media’s attention and observers believed this did popularize discussion on illegal construction. Pristina’s encroachment problems became an issue during the 2007 municipal elections. On the campaign trail Isa Mustafa, the LDK-candidate for mayor, met with AIP

<sup>497</sup> Through AIP’s engagement with civil society, the NGO eventually identified four “prototypical categories” of illegal construction, which “made it easier to understand the phenomenon”. These categories were then used by student volunteers “to track developments that had occurred since 1999”(AIP 2009).

<sup>498</sup> Florina Jerliu (NI.1) 06.17.2015.

<sup>499</sup> Legend: Buildings in black possess formal connections to the water supply; red are informal connections(AIP 2012:41).

volunteers who mapped illegal construction. He also asked one of AIP's own founders, Florina Jerliu, to become his personal consultant in matters of urban development in January 2008, after he had won the election. This outcome appeared to raise the possibility that the illegal construction would be adequately dealt with (Vöckler 2008:15).

Mustafa's municipal government used the AIP's data and categories to propose a new strategy for legalization: the 'Mid-term Development Strategy of Prishtina 2008-2011'. Jerliu directed a part of the strategy, which involved creating a detailed legalization 'Manual'.<sup>500</sup> She claimed the Manual became the basis for the Municipal Regulation on Treatment of Illegal Buildings (2009). The Urbanism Department was thus tasked to assess and then declare constructions as illegal, and to make a consistent legalization process possible within three months.<sup>501</sup>

Mustafa was re-elected in 2009, yet he appeared to have done little to enable this process, according to municipal records, and his own government. Municipal records show that just 6147 buildings were declared illegal. None were legalised before 2010. Just 128 buildings in between 2010 and 2013 were legalized. None were legalized during Mustafa's final year in office.<sup>502</sup> According to his own advisor on legalization, Mustafa's legalization failed because "it was not his priority" However, she noted Mustafa "did create the pre-conditions for legalization. He supported the entire process while it was in the design phase; and at the end, when he came under political pressure for not implementing it."<sup>503</sup>

Further, international observers noted that Mustafa made little effort to reform other aspects of land use governance, which did not help stop illegal construction. For instance, construction permitting did not change because Mustafa's urbanism department "was not interested in changing things".<sup>504</sup>

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<sup>500</sup> This was produced by the Archis Network with support of the municipality, the Institute of Spatial Planning at the MESP and the AMK (AIP 2009:1-3).

<sup>501</sup> The law obliged the Directorate of Urbanism, Cadastre and Environmental Protection to register the illegal constructions in the city ninety days after it entered into force. Municipality of Pristina, Municipal Regulation on Treatment of Illegal Buildings (2009), article 6.

<sup>502</sup> This data was provided to the author on 18.01.2016 by the Pristina's Urbanism Department after an email exchange.

<sup>503</sup> Florina Jerliu (NI.1) 8.9.2015.

<sup>504</sup> Interview with an anonymous person (AI.46), Pristina 8.9.2015.

According to Sphend Ahmeti, Mustafa's successor the Mustafa city government only "tried" to deal with the illegal construction problem. His failure seemed evident given that "thousands of [new] buildings [were built] with no permit" during his tenure. Moreover, Ahmeti noted that during his predecessor's administration there had been "quite a synergy between some people in the municipality and the construction sector, especially those who built illegally" (he explicitly stated that he did not suggest Mustafa was involved in that "synergy").<sup>505</sup> Indeed, some interviewed construction companies complained that the construction permitting system was riddled with rent-seekers. Mainly politically connected companies won building permissions and municipal contracts and in return laundered money for political campaign finance.<sup>506</sup> Another company suggested that it was the fault of a construction companies if they were asked for bribes: that meant they "did not have their papers in order".<sup>507</sup> One of the largest interviewed building companies found the Mustafa administration very supportive of its business: Mustafa "was someone...who knew about [the construction] business and tried to make it fast and efficient."<sup>508</sup>

Mustafa did adopt a new municipal urban plan in 2013, yet according to a knowledgeable interviewee its formation was influenced by private interests. The plan did not comply with a new spatial planning adopted in 2012 (see below).<sup>509</sup> Moreover, the urban plan made the northwest of Pristina, an agricultural area, into an urban zone. This contradicted larger-scale spatial plans (the municipal development plan). However, spatial planners were "forced...to accept the will of the mayor" since the area lay close to "planned highways to Podujevo [towards Serbia] Peja, and Skopje." This was not untypical, but a "phenomenon of land transaction corruption. It begins with planning, and then it goes on and on."

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<sup>505</sup> Sphend Ahmeti, (NI.31).

<sup>506</sup> Interview executive at construction company 1 (AI.34), 23.09.2015.

<sup>507</sup> Interview executive at construction company 2 (AI.35), 23.09.2015.

<sup>508</sup> Interview executive at construction company 3 (AI.36), 24.09.2015.

<sup>509</sup> Interview Liburn Aliu, head of urbanism department, Pristina municipality (NI.33), Pristina, 9.06.2015.

## *Ahmeti's response to unpermitted construction 2013-2015*

Vetevendosje! [Self-determination!] ejected Mustafa from the mayor's office on the 1<sup>st</sup> of December 2013. He was replaced by Sphend Ahmeti, a professor at the American University of Kosovo, the first elected mayor in Pristina's post-war history that was not a member of the LDK. During the mayoral campaign he announced that "[o]n the day that VETEVENDOSJE comes to power in the Municipality of Prishtina, we will...not allow any unauthorized construction to start. [The new city government] will stop work at all facilities that are being built without a building permit of the Municipality."<sup>510</sup>

This fitted Ahmeti's campaign slogan, which was 'The law applies to all'. According to Vetevendosje, many construction businesses did not always obtain construction permits in a lawful manner. Ahmeti wanted this to change.<sup>511</sup> Still, there were many actors who had not done so after June 1999, as mentioned earlier. Moreover, by 2013, there was a large group of construction workers in Pristina. A large supply chain of restaurants, including transport companies and the steel and cement industry were indirectly dependent on the 'formal' construction businesses.<sup>512</sup> Proclaiming to end all (future) illegal construction thus was likely to still be controversial.

Indeed, Ahmeti had beaten Mustafa after a second-round of voting (he had lost the first) by 1 percent; and voters did not give his party a majority in the municipal council. The LDK got the votes to win the chairmanship of municipal assembly.<sup>513</sup> That meant LDK effectively had veto power over Ahmeti's reform proposals<sup>514</sup>, including proposals for changing spatial plans, to create more open space, parking space roads and greenery.<sup>515</sup>

Regardless, Ahmeti could still fulfil his promise to start enforcing land use regulations in a more impersonal manner. As mayor-elect, Ahmeti already warned "all the builders to stop...illegal

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<sup>510</sup> <https://www.facebook.com/vetevendosje/> 1.12.2013 (last checked 13/06/2018).

<sup>511</sup> Sphend Ahmeti (NL31).

<sup>512</sup> Interview anonymous urban planner (AI.2), 30.09.2015.

<sup>513</sup> Out of 51 seats in the municipal assembly, the LDK won 18; Vetevendosje 10, PDK 8 and the AKR 4. <http://inpo-ks.org/?p=515> (last checked 13/06/2018)

<sup>514</sup> <http://koha.net/?id=8&l=38930> (2014) (last checked 13/06/2018)

<sup>515</sup> Sphend Ahmeti (NL31); Interview Liburn Aliu (NL33).



constructions, because these will not be tolerated after December 26" 2013 (the date of the start of his mandate). He also called on the Inspectorate to prevent any usurpation of public space, or illegal construction and that an internal audit would "assess the real situation in the municipality."<sup>516</sup>

Immediately upon entering office Ahmeti began taking measures to change the rules-in-use governing construction in Pristina. Firstly, Ahmeti selected a handful "of the largest construction businesses" who continued to ignore his calls to get a permit. Together with law enforcement officials, he demanded that they apply for building permits for ongoing projects, or face demolition. Ahmeti reportedly received death threats but persevered (Borger 2014). Secondly, Ahmeti reorganised the Urbanism Department by removing officials suspected of using their positions to favour certain construction companies and individuals. He fired 8 out of 50 employees in the Department.<sup>517</sup> To reduce the scope for rent-seeking further, the new head of the Department, Liburn Aliu, began to divide urban planners from officials responsible for construction permits and to place them in separate departments.<sup>518</sup> Lastly, he formally invited a Prizren-based NGO, Ec Ma Ndryshe, which specialized in monitoring land use abuse and heritage protection, to help monitor and hold accountable the inspectorate and permitting authorities.<sup>519</sup>

Soon the rules-in-use seemed to change. Ahmeti claimed that there was no more illegal construction (see epigraph) of big buildings in the city centre, and suggested this was a result of enforcing land use regulations impersonally rather than based on connections.<sup>520</sup> Most interviewees agreed with Ahmeti's basic observation: that the new administration's Urbanism Department had halted the construction of large buildings in downtown Pristina.

However, according to construction companies the main reason was that the municipality had stopped issuing occupancy permits (management rights), which were essential to formally put newly

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<sup>516</sup> [http://www.vetevendosje.org/news\\_post/ndertimet-pa-leje-nuk-do-te-tolerohen/](http://www.vetevendosje.org/news_post/ndertimet-pa-leje-nuk-do-te-tolerohen/) (last checked 13/06/2018).

<sup>517</sup> Liburn Aliu (NL33)

<sup>518</sup> Idem. According to Jerliu a similar idea had been rejected by Mustafa. Florina Jerliu (NL1)

<sup>519</sup> Ec Ma Ndryshe signed a Memorandum of Understanding with the municipality and the British Embassy in March 2014 to work facilitate monitoring by the NGO in monitoring the urbanism-related decisions of the municipality's Departments, Assembly and Mayor (Ec Ma Ndryshe 2014).

<sup>520</sup> Sphend Ahmeti (NL31).

constructed buildings into use. Construction companies claimed that the new city government required payment of all their unpaid taxes on construction land before they would issue occupancy permits.<sup>521</sup> Some complained they would still not be given the occupancy permit after paying, and that they received no further explanation from municipal officials.<sup>522</sup> One executive even suggested the occupancy permit procedure had slowed because the Urbanism Department was trying to abuse it as a rent-seeking tool.<sup>523</sup> Veteran urban planners like Jerliu and Pallaska suggested the young members of the new Urbanism Department might lack the experience with the procedures to allocate permits.<sup>524</sup>

Some construction companies began to send their workers to publicly protest against Liburn Aliu, the new head of the Urbanism Department who was ultimately responsible for issuing permits. The protests were formally led by the Association of Construction, or AoK (Gazeta Express 2014).

The data suggests that Ahmeti's administration had increased the number of construction permits that were issued (see figure 16 below). Moreover, unlike previous administrations Aliu's Urbanism Department had made the permit application process more transparent by making the stages of the process (more) publicly accessible on the municipal website.<sup>525</sup> Still, the number of issued occupancy permits remained unclear.<sup>526</sup>

That said, many interviewees, including Aliu and international observers considered the AoK-led protests to be politically motivated. Many of the protesting companies were said to have kept close ties to the LDK<sup>527</sup>, which after its defeat in the mayoral election had managed to win in the national elections. None other than Isa Mustafa became prime minister of the new government.<sup>528</sup> Ahmeti noted that "because they were in power for 14 years in Pristina...[and]...part of this network [of construction companies] any of our successes shows their failures". The LDK thus had an interest to

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<sup>521</sup> Unidentified contributor (AI.3); Interview involved international expert (AI.33), Pristina, 23.06.2015.

<sup>522</sup> The outstanding taxes could complicate the company's ability to turn the investment into a profit). Executive construction company 1 (AI.34).

<sup>523</sup> Executive construction company 1 (AI.34).

<sup>524</sup> Those involved in urban planning for a long time suggested that after many of the urbanism department staff were removed, insufficient institutional knowledge remained to make the department function properly. Florina Jerliu (NI.1); Elvida Pallaska (NI.32).

<sup>525</sup> Department of Urbanism website <https://docs.google.com/spreadsheets/d/1dMRuDmL3Iv2V88LZhqIP9as68fP6t3ojO5GrE9daMpk/pubhtml?gid=702960368&single=true> (last check: 29.04.2016).

<sup>526</sup> The municipality did not respond to requests for data regarding the number of occupancy permits issued.

<sup>527</sup> Liburn Aliu (NI.33); an involved international expert (AI.33).

<sup>528</sup> As Mustafa became Prime Minister, his former Deputy Mayor Avdullah Hoti, became the minister of finance.

use its network and newly won position in the GoK “to organize all the time” and to “sabotage” Ahmeti’s efforts. Indeed, Ahmeti considered the LDK to be “the biggest opposition” to his plans for changing land use governance.<sup>529</sup>

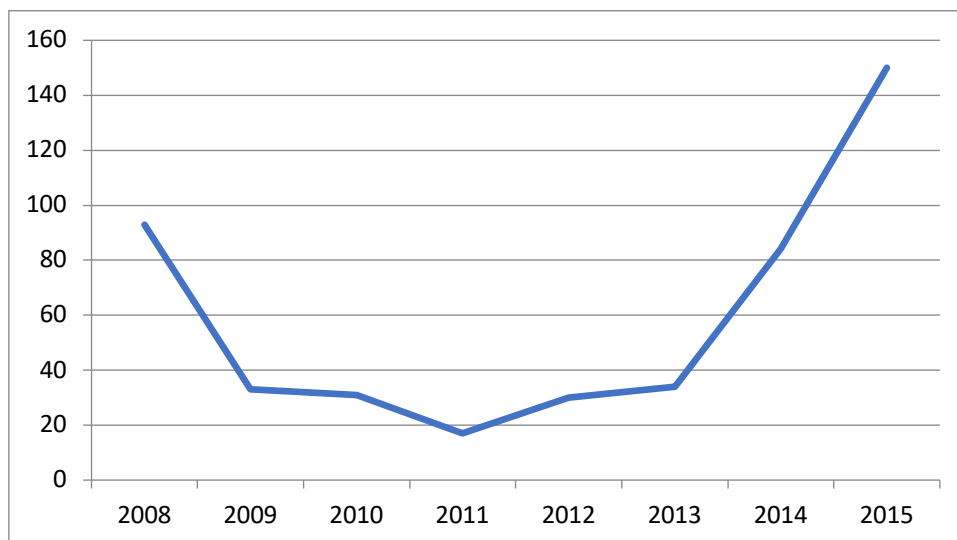


Figure 16: Total amount of single construction permits issued in Pristina 2008–2015 (Urbanism Department Pristina 2016).

Construction companies thus attributed the slump in the construction industry to Ahmeti. There was some truth to this according to international observers. As mentioned, the World Bank RECAP project noted that “measures against the informal sector” reduced the number of property transactions in 2014.<sup>530</sup> Given that Pristina was still the largest construction market, Ahmeti’s measures against unpermitted construction could have affected the calculus of construction companies who had planned to build informally on land that they had purchased formally. Ahmeti had now forced them to put off their planned construction.<sup>531</sup>

However, there were other measures that may have affected the (illegal) construction industry in Pristina as well. For example, the special prosecutor’s office had all ten of Pristina’s building inspectors arrested shortly after Ahmeti entered office. Ahmeti was accredited with cleaning up the urbanism department and its inspectorate (Borger 2014), yet international observers highlighted that

<sup>529</sup> Sphend Ahmeti (NI.31).

<sup>530</sup> (World Bank 2015:3). See also the previous chapter.

<sup>531</sup> Interview involved international expert (AI.33).

the investigations into their potential illegal activities had started well before Ahmeti arrived.<sup>532</sup>

Moreover, it was not (just) regularisation but the deteriorating formal housing demand<sup>533</sup>; the declining amount of open space in the city, and the relative affordability of acquiring building permits in neighbouring municipalities that could explain why illegal construction in downtown Pristina had ‘ended’. Indeed, by 2015, the construction market (across Kosovo) slumped (see opening of this chapter). Finally, there were those who believed a state-led effort to stop construction companies hiring informal workers may have contributed to the slow down also.<sup>534</sup>

### *A three-part strategy for land use reform: 2008-15*

However, there was more an important state-led reform that might have had an influence on reshaping incentives to construct without a permit.

The GoK had embarked on a “three-part strategy” in 2012 to reform the legal framework for land use governance. This had as its ultimate goal to make it possible to combat illegal construction: not just in Pristina but across Kosovo (USAID 2015a). Ferid Agani, the minister at the MESP explained (in retrospect) that the GoK had learnt lessons from the status quo. According to the GoK “the construction process” had been too “lengthy”, costly, and opaque. Land use governance was not guided by spatial plans with clear principles. This situation had allowed certain (unnamed) actors to “misuse” the construction permitting procedure “as a source government revenue”, and to “treat...it as a tax mechanism rather than as a field of municipal service delivery”. Plus, there were too many

“barriers...[that were] in direct conflict with the desire of the population to improve and rebuild their properties, to build places for economic activity and generally to improve their circumstances and life” (Agani 2015).

Agani thus found it understandable that many had resorted to illegal construction (see above). To

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<sup>532</sup> The inspectors allegedly had abused their authority by demanding apartments in (illegal) buildings they had themselves inspected. International official (AI.24). Also see European Commission (2015:32).

<sup>533</sup> Some (anonymous) interviewees claimed that the 2011 city census showed that thirty per cent of apartments in Kosovo were empty. This estimate has been (unscientifically) challenged. A saturation of the apartment market in Pristina may have resulted from the persistently high (estimated) average price of 700-800 euros per newly square meter of land in down-town Pristina. Given the lack of available data on pricing and apartment vacancy in the construction market, it is difficult to assess their accuracy. Interviewed banks and construction companies could not provide specific data.

<sup>534</sup> Email exchange with involved international expert (AI.33).

remedy this situation, the GoK resolved to institutionalize new national-level construction permitting, spatial planning and legalization rules (*idem*).

The origins of this effort stem from the period after independence. The GoK had adopted a strategy and action plan for reforms for the period 2009-2015. One of these was to digitize a whole range of processes to obtain land rents (including from the land registration services). The digitalisation of land use governance was not outlined as a specific priority, nor was construction permitting, planning or legalization reform. However, the GoK did note that “[e]lectronic services provided by municipalities were too modest” and required “every municipality” to digitalize its service provision. It also identified potential donors, including USAID and the World Bank (but not the EU), to support this effort (GoK 2008a:9–14,18).

After independence USAID had adopted its own 2010-2014 strategic plan. This noted how Kosovo’s “substantial devolution...responsibilities to municipalities” was at odds with their limited capacities “to deliver essential services.” USAID was of the view that Kosovo’s municipalities needed “strategic, cohesive assistance” by offering “integrated economic growth and governance support programs” (USAID 2012:4-5). This led to a concrete commitment with the Business Enabling Environment Program (BEEP). BEEP “identified and raised “doing business” issues to a high level of attention within the government and achieved a wide consensus on business climate reform”. It also achieved a focus on enhancing the “transparency of the legal and regulatory regime” (*idem*). The reference to “doing business” was evidently to the World Bank’s standards<sup>535</sup> on construction permitting. Improvement on the index required cutting the time, costs and number of procedures required to provide building permissions.<sup>536</sup>

BEEP was approached by the GoK to advise on how to proceed with construction reform in 2010. The MESP had already drafted a 250-page-long law which sought to incorporate the construction, permits, spatial planning and legalization aspects of land use governance.<sup>537</sup> BEEP

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<sup>535</sup> As suggested by USAID (2015a).

<sup>536</sup> Unidentified contributor (AI.3).

<sup>537</sup> This version of the law was modelled after Macedonia’s. *Idem*.

however advised the ministry to break up this law into three separate ones: a law on construction, spatial planning law and a law on legalization. It also recommended to begin with searching for, and eliminate, legal provisions in the 2004 construction law that enhanced arbitrary authority and could be used to enable rent-seeking.<sup>538</sup>

By 2011, the MESP was addressing “uncertainties” in that law with the intent of

- “1. reducing the procedures, time and cost of obtaining a construction permit through introduction of the single window through the Authorized Permit Body,
2. clear steps for construction inspections, [and]
3. introduction of [a] Silence is Consent” provision<sup>539</sup>

This process was said to be guided by “consideration of the Doing Business Recommendations” (Berisha 2011), and “harmonization ... with European standards”. However, no specific evidence was found that the EU influenced the formation or adoption of Kosovo’s construction permitting reform in the manner that USAID did.<sup>540</sup>

However, this construction permitting reform effort driven by the MESP and USAID was resisted by municipalities. Part of the reason was that Kosovo’s ministry of finance required municipalities to generate thirty percent of their projected budget from own source revenue (OSR) (the rest would be allocated by the GoK’s state budget). Municipal revenue was to be generated by taxing property (the only permissible tax under the law on local self-governance<sup>541</sup>). Yet according to the experts involved in local (property tax) and revenue reform, many mayors remain reluctant to impose a property tax on their voters.<sup>542</sup> In order to compensate construction permit fees were oftentimes treated as a form of taxation. Municipalities thus charged (disproportionately) expensive building permit fees. One

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<sup>538</sup> Idem.

<sup>539</sup> I.e. if the municipality is unjustifiably slow in providing a construction permits, it is approved in any case.

<sup>540</sup> The harmonization appeared to be a reference to new EU regulation on construction materials adopted in 2011. The EC did note Kosovo needed to approach the *acquis* on “construction products” in the section on progress in the internal market area. (European Commission 2011b:27-28).

<sup>541</sup> Unidentified contributor (AI.3).

<sup>542</sup> Interview property tax reform experts (AI.37), Pristina, 23.09.2015.

knowledgeable source claimed that in Pristina, “the average fee of a construction project was 90,000 euros”.<sup>543</sup>

The new construction law would force municipalities only charge fees to only recover administrative costs only. It also tried to remove the role of the reviser (see above). Both efforts faced resistance. The fear among municipalities was that the law would in effect shrink their budgets: for on average, 35 per cent of the OSR was generated from construction permit fees.<sup>544</sup> On behalf of the municipalities, the AMK began to lobby heavily against the MESP’s reform proposal. The outcome was a compromise: the final version of the law distinguished between an administrative, density and infrastructure fee. That meant municipalities kept discretionary authority to charge more for permits if this made sense under the circumstances.<sup>545</sup> The Ministry had also struggled to roll back the “reviser” role. Architects resisted the legislative process in 2010-11. In the end, this was to no avail, and the provision was removed.<sup>546</sup> In addition, the law simplified the procedure and it introduced the silence is consent rule.<sup>547</sup> While the MESP had also intended to remove occupancy permits, the new legislation ultimately retained this provision when it was adopted in 2012.<sup>548</sup>

When the construction law entered into force in 2012, it appeared to have effect, both according to the DBI (see appendices) and local observations.<sup>549</sup> USAID lost no time to recommend to the GoK the next step: after the construction law reform, spatial planning reform was next. For without it a structural “lack of local land use plans” would remain, thus keeping construction permitting processes prone to delays and rent-seeking (USAID 2012:33), and thus incentivize illegal construction<sup>550</sup>.

Indeed, the MESP had “expressed the intention to seek support for a nationwide program to assist

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<sup>543</sup> Unidentified contributor (AI.3).

<sup>544</sup> Member of AMK (AI.32)

<sup>545</sup> Unidentified contributor (AI.3); Member of AMK (AI.32).

<sup>546</sup> Unidentified contributor (AI.3).

<sup>547</sup> The new Law on Construction decreed that if the municipality does not respond within forty days, then they have to issue the permit. Law on Construction (2012) <http://www.kuvendikosoves.org/common/docs/ligjet/Law on Construction.pdf> (last checked 13/06/2018).

<sup>548</sup> The occupancy permit was particularly seen to be a potential rent-extraction device for municipal inspectors: because once a building was built the investor might well pay ‘any price’ to acquire the occupancy certificate in order to avoid a complete loss on his or her investment. Unidentified contributor (AI.3). Also see article 28 of the Law on Construction (2012) <http://www.kuvendikosoves.org/common/docs/ligjet/Law on Construction.pdf> (last checked 13/06/2018).

<sup>549</sup> Local property rights expert (AI.25).

<sup>550</sup> Unidentified contributor (AI.3).

localities [sic] with preparing land use plans” by the end of 2012“ (USAID 2012:33).

The new law that was developed permitted zoning; no longer would only regulatory maps set the principles for land use rules. The choice for zoning was partly a response to the lack of regulatory plans, and partly a result of USAID arguing that zoning would make it more affordable for municipalities in Kosovo to update land use rules. Michelle Pinkowski, the Resident Advisor on construction spatial planning at USAID in Kosovo made this case for zoning: “urban regulatory plans” with their “great detail” might have had utility “under a heavily centralized planning system.” Yet in a post-conflict environment with a less centrally regulated “market-based economy”, this system was no longer appropriate. The old system required “drawing in detail how each building should sit on every given parcel (as urban regulatory plans do)”, but this was not “cost-efficient” and it left “gaps” in both “planning capacity and permit enforcement”. This was evident from “huge swathes of municipal territory (notably agricultural land)” that had been “left without any planning at all”. Pinkowski thus explained how the old spatial planning system contributed to situations of unregulated land access where “green space disappears and infrastructure grows disjointed” (Pinkowski 2015).

Recognition of this problem led the GoK to decide that it was better “to transition to the well-tested approach of municipal-wide zoning.” The hoped-for advantage of zoning was that it would be more affordable and possible to set land use rules for whole municipal jurisdictions. It was further hoped that this would make land use “more predictable and regulation more transparent” and thus help “attract additional investment” (idem).

However, some local planners opposed the idea of introducing zoning. Jerliu for example asserted that abandoning top-down allocation of land use rules and land rights “cannot happen overnight.”<sup>551</sup> The new spatial planning law did leave municipalities a choice to develop zoning or regulatory plans.<sup>552</sup>

Although the law and possibility of zoning were slow to be implemented (by 2015, most

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<sup>551</sup> Florina Jerliu (NL1).

<sup>552</sup> The law also required that they annually update the MESP on the “implementation status” and “state of [the] Municipal Development Plan and Municipal Zoning Map and Detailed Regulatory Plans.” See Law on Spatial Planning (2013), Article 11.1.14.



municipalities still lacked zoning maps)<sup>553</sup>, the MESP pushed for more land use reform. It tried to digitize spatial plans so that citizens could more easily get informed about land use rules “without having to wait for [their] requests [to emerge from] some drawer”. At heart, the Ministry’s core aim here was the same though: to better attract investors.<sup>554</sup> However, although digitizing spatial plans would be in line with the GoK’s post-independence digitization strategy, the Ministry of Finance (MINFIN) provided no financial resources. The reason was that there was insufficient “political will” to make this a priority within the government’s tight budget.<sup>555</sup> The MESP was thus forced to choose the slower path: asking donors. Its officials applied for IPA funding, but were told by the EC that land use reforms were ineligible for funding.<sup>556</sup> However, the EC changed its position towards the end of 2014. The Indicative Strategy Paper for IPA-II funding (ISP), the successor of the MIPD, noted that Kosovo clearly needed to improve tenure security and agricultural land consolidation.<sup>557</sup> In early 2015 the Ministry finally succeeded in securing resources from the EU. The MESP, bent on digitizing spatial plans, managed to convince the EC to expand IRUSP (the Implementation of Rural and Spatial Planning Project): an existing 2 million euro IPA project originally intended to support “Rural areas mapping services...[f]or use in agriculture.” The IRUSP office in Pristina began setting up an application that would allow digital access to spatial plans in all of Kosovo by the end of 2014 and in 2015 launched a pilot project that scanned regulatory plans and zoning maps of 5 municipalities, including Pristina.

As mentioned, the project ostensibly was all about rural development.<sup>558</sup> But less publicly IRUSP aimed “to stop local level corruption around land issues” by making plans and patterns of land use publicly visible. Thus citizens could discover cases where spatial plans are used as a rent-seeking tool.

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<sup>553</sup> The MESP had not yet finalised the law’s administrative instructions. Kosovar Official 2 (AI.31).

<sup>554</sup> Idem.

<sup>555</sup> Idem.

<sup>556</sup> Officer for European Integration, MESP (AI.4). The EC’s Multi-annual Indicative Planning Document (MIPD) for IPA funding 2007-2014 had not mentioned land use (or spatial planning, housing or construction) as eligible for funding. See European Commission (2011).

<sup>557</sup> Under the section agriculture and rural development (acquis chapter 10), the strategy aimed to provide IPA II assistance to achieve “[e]fficient land management and land market organisation, including the reduction of illegal construction on agriculture land” by 2020 (European Commission 2014:29,33-34).

<sup>558</sup> By 2015, IRUSP formally focused on “supporting municipalities to integrate rural spatial planning recommendations into MDPs [urban plans] and assisting in their implementation” as well as “strengthening national institutional capacities, structures and coordination in enforcing construction zoning.” IRUSP leaflet obtained by the author (2015).

An involved international expert fully expected that the project would make land use rules transparent and accessible online and that citizens would thus gain countervailing power:

“information is power and in giving the public [access to information on land use rules-in-use]...[they can] see...that [a personal] power line [connection] should not have been installed, but was...because it was the friend of the mayor [abusing] the municipal budget...”<sup>559</sup>

However, although this was a distinct possibility of the application, authorities were still attracted by the prospect of more easily being able to update existing plans and help attract investment. They evidently paid less attention to the risk that the project might help reveal rent-seeking practices.

According to the same observer, they just think

“how beautiful this will be. But when the process is done, everyone can see that the parcel number, the owner[‘s] name is there, and a red dot is on the building that it is illegal.”<sup>560</sup>

That said, there were local officials who did “not have anything to hide [and who] are happy with the transparency” on land use restrictions. Moreover, the application would only be introduced piecemeal and not yet introduced for the whole country That made it more acceptable for governing elites. But there was little doubt that with the spatial planning application the EU was seeking to “change the practices how land is abused” in Kosovo.<sup>561</sup>

### *Legalization: 2013-2015*

After the construction permitting and planning laws were adopted, the GoK aimed to complete the trilogy of land use reforms with a push for a new legalization law that according to the minister for environment and spatial planning would help solve “the problems of the past” (Agani 2015): i.e. the land use problems arising from existing illegal construction. A Law on Treatment for Illegal Buildings (LTIB) had already been adopted in 2008, but this was never signed into law. An EU progress report on Kosovo lamented this, but evidently paid no further attention to this issue after 2010.<sup>562</sup> It was only

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<sup>559</sup> Involved international expert (AL33).

<sup>560</sup> Idem.

<sup>561</sup> Involved international expert (AL33).

<sup>562</sup> See EC progress report (European Commission 2008b:21; cf. (GoK 2010:24)).

when the USAID-supported three-part strategy was ready to align the legalization law with the other two laws, that the EUSR began insisting on implementing the LTIB, which he believed would expedite protection of heritage and religious sites.<sup>563</sup> However, the Deputy Minister at the MESP noted that EU conditionality had had little influence on the GoK's decision-making regarding the legalization law.<sup>564</sup>

In fact, the MESP decided to drop the LTIB. It sent a new Law on Treatment of Constructions Without a Permit for adoption at the end of 2013.<sup>565</sup> By early 2014 it finally was. Meanwhile, USAID launched the Partnerships for Development (PfD) to support its institutionalization. The next year USAID was engaged in supporting the drafting of administrative instructions and persuading sceptics in municipal and central government that it was possible to legalize in accordance with the new law.<sup>566</sup>

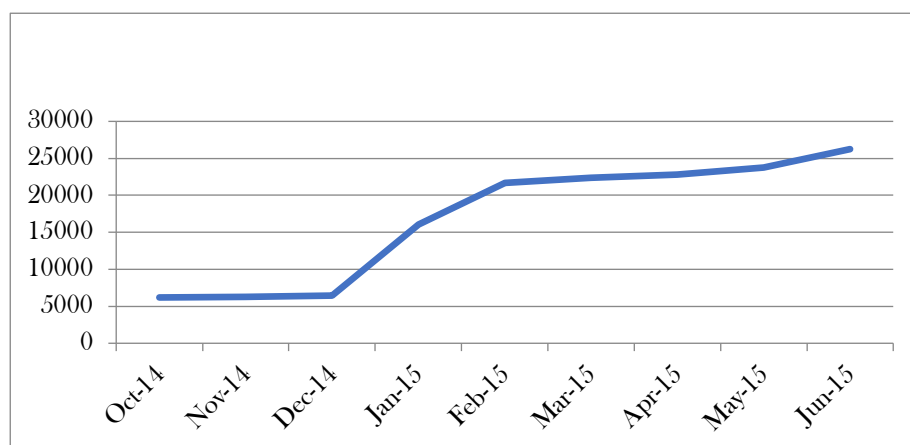


Figure 17: Buildings declared illegal in Pristina. Oct. 2014-Jun. 2015 (Urbanism Department Pristina 2016).

<sup>563</sup> Unidentified contributor (AI.3).

<sup>564</sup> Ferat Shala (NI.24).

<sup>565</sup> Law for Treatment of Constructions Without Permit No. 04/L-188 (2013).

<sup>566</sup> Smaller municipalities often had concerns about how to organize legalization given limited human resources. Often just one or two officials would be formally responsible to process and verify legalization requests. To solve this, the MESP promised to make its staff (of about 300) available to assist local municipalities. Yet also within the ministry officials were anxious about becoming solely responsible for a given task in the legalization process. USAID helped create a compromise where two officials would share responsibilities for such tasks. Involved international expert (AI.33). Deputy Minister Shala confirmed that his ministry remained committed and convinced that legalization was possible thanks to support from the think tank community and USAID. Ferat Shala (NI.24).

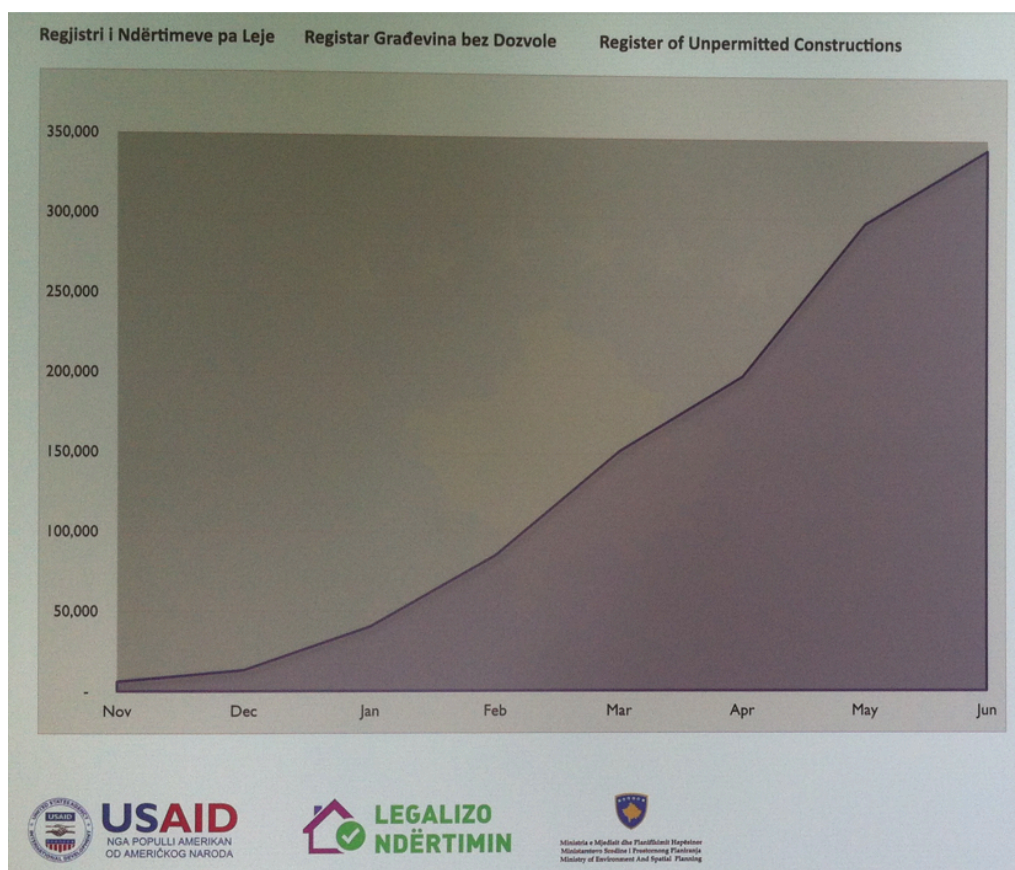


Figure 18: Progress of Kosovo-wide registration of unpermitted construction (picture taken at Legalization Milestone event taken by author on 19.6.2015)

Nevertheless, when the legalization process launched in October 2015 the process took off slowly, both in the municipality and across the country (see figure 17 and figure 18 above). The MESP sought to adapt to this situation with several (ad-hoc) interventions.

Firstly, the MESP asked IRUSP to create an unpermitted construction registry in December 2014, since the latter was already engaged in scanning spatial plans. IRUSP thus became a complementary partner to the legalization project.<sup>567</sup> Secondly, in January, GoK decided to organize a “legalization day” with a range of stakeholders. This led to the involvement and cooperation of the OSCE regional offices and the local branches of Kosovo’s 10 banks, who encouraged their clients to register their unpermitted buildings (Agani 2015). Thirdly, by using the KCA’s access to satellite imaging, the MESP could see that the number of registrations was likely to be well below the number

<sup>567</sup> Involved international expert (AI.33).

of illegal structures. The Ministry thus announced at the end of January that it was extending the deadline for registration (the day before it expired). As the figures (18 and 19) above show the decision to extend the deadline until June resulted in large additional numbers of people registering for legalization in Pristina and across the country.

Fourthly, the GoK, led by Mustafa cooperated closely with Pristina's government led by Ahmeti. Using networks of volunteers, KCA technology (see figure 19) as well as the support of Ec Ma Ndryshe, Ahmeti encouraged local citizens to register by signalling the potential benefits of acquiring the legal title. By June, the municipality managed to map and register 20281 additional unpermitted constructions.<sup>568</sup>

Thus multiple parties cooperated and were included in the effort to institutionalize the legalization process. All faced strong incentives to do so. Ahmeti explained that his administration saw an opportunity to realize his administration's agenda for creating more public space in the city (assuming some buildings could not become eligible for legalization).<sup>569</sup> Also the GoK, intended "to meet citizen demand, promote investment and improve safety" (USAID 2015a). Institutionalization depended on the active and directed financial and technical support of donors: both from USAID and the EU's IRUSP, as well as the OSCE, who given their commitment had no interest in failure.<sup>570</sup> Moreover, banks had a financial interest to see legalization become a success: if land rights could be granted, less land would be de-facto a common-pool resource and more land formally privately owned. Thus banks would see their potential pool of clients increase, as more people could use real estate as collateral.<sup>571</sup> Most of all, citizens could benefit.

Indeed, in Pristina the number of properties registered for legalization was unprecedented. Although the outcome of entering the legalization process was uncertain, many citizens seemed to

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<sup>568</sup> Liburn Aliu (NI.33).

<sup>569</sup> Idem.

<sup>570</sup> The OSCE's network of offices across Kosovo was also credited by minister Ferid Agani in a speech at the Legalization Milestone event on 19.6.2015. The next step of the reforms was to better regulate licensing architects, and to penalize future abuse of land use and construction codes. Kosovar official (AL31).

<sup>571</sup> Interview Petrit Balija, executive director, Kosovo Banking Association (NI.34), 10.09.2015.

wager that doing so was preferable to the insecurity of informal land use, which had been the status quo sine 1999 (USAID 2015a). Citizens did appear to have been incentivized to register when they could see how widespread the problem was and that others had preceded them in registering their illegal buildings (figure 19).<sup>572</sup> Several interviewed citizens indicated they were specifically incentivized by the prospect of being able to pass on their home for inheritance or to secure a mortgage (USAID 2015a). According to Ferat Shala, the fact that 350,000 unpermitted buildings had been registered across Kosovo showed that “people really knew about the process”. He attributed this to “our communication strategy”, which involved engaging citizens and incorporating their concerns. The fact that they put their faith in the capacity of the ministry and municipalities to process their requests for legalization impartially and fairly he considered a notable “success”.<sup>573</sup>



Figure 19: Map of illegal construction GPS image on 23.02.2015.<sup>574</sup>

Apart from spurring investment, the minister for environment and spatial planning hoped that legalization would finally end encroachment, and thus reduce the scope for officials using their authority arbitrarily to exploit such situations of unregulated land access (Agani 2015).

<sup>572</sup> According to one interviewee Ahmeti’s Facebook post (figure 19) went “viral” and came on TV. Interview with an involved international expert (AI.33), Pristina 23.06.2015.

<sup>573</sup> Ferat Shala (NI.24).

<sup>574</sup> On 23 February 2015 Ahmeti posted this picture on his Facebook page. It shows the extent and number of registrations for legalization. Red dots mark unpermitted buildings, green dots are buildings with permits. Ahmeti was given access to it via the GIS technology (of the KCA) <https://www.facebook.com/shpend.ahmeti/posts/10153608903912166> (last checked 13/06/2018).

Still, it was possible that the next steps of the legalization process would create new opportunities for rent-seeking practices. Moreover, by September 2015, it remained a question how those who had failed to register before the June 2015-deadline should be treated, and how municipalities, including Pristina would deal with the existing 46528 cases of registered unpermitted construction, given very limited local capacity (by December Pristina municipality had processed five cases).<sup>575</sup> Some worried that a decision to keep the legalization process permanently open (allowing registration of unpermitted buildings to register) would incentivize further illegal construction, or disincentivise cooperation from the broad range of actors involved. Another risk was that a part of the population that had never built illegally but lacked a permit (as was the case for many socialist-era buildings) would turn away from the process.<sup>576</sup>

Ultimately whether legalization would end illegal construction and formalize land use governance hinged on the readiness of citizens to continue to participate in the legalization process. Secondly it seemed to depend on whether officials were willing to implement the law in an impersonal manner, and whether further illegal construction could be avoided. Interviewees agreed with Ahmeti's observation that there was no more illegal construction of big buildings in the city centre, yet they also observed that illegal construction continued in the periphery.<sup>577</sup>

In spite of this uncertainty, the joint efforts of local, state-level and international actors and their enabling of the first step in institutionalizing legalization, inspired confidence. Indeed, it seemed that a “permanent” institutional solution for illegal construction was no longer “impossible” (USAID 2015a).

## *Concluding remarks*

When unregulated land access became a status quo in Pristina after 1999, it allowed many to ignore spatial planning and constructing permitting rules, and left a few officials well positioned to take

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<sup>575</sup> Municipality of Pristina. Email Exchange. 18.01.2016.

<sup>576</sup> Nehat Ramadani (NI.30).

<sup>577</sup> Ahmeti himself acknowledged this. Sphend Ahmeti (NI.31). All other interviewees affirmed this.

advantage of the situation who could enable rent-seeking practices. In the mid-2000s public awareness about the illegal construction problem seemed to increase. Yet ultimately vested interests in this enduring status quo situation seemed to block the handful of attempts to drive changes toward a more impersonal form of land use governance.

The legal foundations for such change were laid after independence in 2008. Unlike the UNMIK-period, political will to successively reform construction permitting, planning and legalisation laws emerged in national government. Further, donors, particularly USAID, were now dead-set and committed with technical and financial resources to assist the GoK's three-part strategy. Governing elites recognized that Kosovo needed clearer land use regulation to reduce room for rent-seeking and uncertainty, and to increase Kosovo's ability to attract (foreign) investment. Leaders at a municipal and national level also seemed to begin to recognize that many voters no longer tolerated the economic and legal insecurity of living in unpermitted structures. In short, the incentives to engage in substantive land use reform processes had changed after many year of unregulated land access.

Reforms at a national were adapted through trial and error, and once they started, received consistent donor support. The institutionalization of new construction permitting, and spatial planning laws did still not lead to impersonal enforcement of land use regulations in Pristina, however. Until 2013, the local administration do little to prevent rent-seeking networks from securing privileged treatment or access to constructing permits. By contrast, after 2013, a new administration forced non-compliant construction companies to obey land use laws. This appeared to be a politically contentious move: the GoK and municipal assembly, led by the party previously in city government, sought to prevent the new administration from carrying out several of its (other) envisaged land use reforms.

In spite of this, Pristina's municipal government and the GoK agreed to cooperate on legalization, evidently because many of their voters now resented living in unpermitted buildings without legal title and land rights. Their cooperation, combined with support from the KCA, USAID, the EU, the OSCE, banks, and activists led to an adaptive and collaborative process that ultimately convinced of thousands of citizens to register buildings for legalization in a period of a few months.



Still, it was evident to all members of this broad coalition that a more impersonal form of land use governance had not yet taken root in Pristina. Further institutionalization of land use reforms was needed, but uncertain. Illegal construction remained widespread in the city, keeping it poorly accessible for formal real estate investors. Yet in spite, and because of this fragile situation, local and state actors, not to mention liberal state-builders, remained committed to land use governance reform.

# 8

## Alienating Kosovo's Ski Resort

There [in Strpce] is a history of distrust towards the government [of Kosovo]. But the politicians have to deal with that.

International expert (2015)<sup>578</sup>.

"I know that Albanians will offer big money for your homes and property...please do not sell your homes..."

Aleksander Vucic in Strpce (2015)<sup>579</sup>

"If this project does not succeed, then [Brezovica Ski Resort] will die. It is...at its last breath. If it finally dies, it will become open to illegal construction, and further environmental pollution."

Expert (2015)<sup>580</sup>

In the Spring of 2015, in the mountains of southern Kosovo, a French-Andorran investor consortium, led by Compagnie des Alpes (CdA) secured a public-private partnership. The deal involved a 99-year lease of 3364 hectares of land, which also covered Brezovica ski resort. Brezovica had long been operated by INEX, a socially-owned company registered in Belgrade, Serbia. CdA would construct in its place a new resort and invest 409 million euro into it in the coming decade (USAID, 2015). The local municipality of Strpce, which was run by an ethnically-Serb mayor<sup>581</sup>, the GoK, the liberal state-building community and international media presented the land deal as a milestone event (Neville

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<sup>578</sup> Interview international expert (AI.43), 10.06.2015.

<sup>579</sup> Prime Minister of the Government of Serbia (GoS) (BETA 2015).

<sup>580</sup> Interview expert involved with the Brezovica Resort Development Project (BRDP) (AI.41), Pristina, 24.09.2015.

<sup>581</sup> In 2015, the OSCE estimated Strpce's total population to be around 7000 (OSCE 2008b). Judging by the most recent election results, Strpce still had a majority of Serbs in 2015. Interview Ivica Tanjasijevic, deputy mayor Strpce (NI.35), Strpce, 28.09.2017.

2016). Indeed, the Brezovica land investment deal suggested the culmination of a remarkable process of social, political and economic change.

For one, Brezovica had long been considered as one of Kosovo's two unsold “crown jewels”<sup>382</sup>: a valued piece of real estate due to its ski resort with “steep slopes and deep powder”<sup>383</sup>, which were said to be of such quality that they were a back-up location for the Sarajevo 1984 Winter Olympics (GoK 2014). Now the land deal stood out among Kosovo’s poor record in attracting foreign direct investment (i.e. compared to other countries in the Western Balkans, including Bosnia (Bartlett 2009; Pula 2014; Uberti et al. 2014)). By all accounts, the 409 million euro would be the single largest inflow of foreign direct investment; at least since the start of quadruple transition in 1999, “if not ever” (Neville 2016). The deal itself was seen as a powerful signal to other investors, who, leaders of the Government of Kosovo believed, were still “scared” of “Kosovo’s image” of political instability and a weak rule of law (Spahiu 2016a).

Further, while international observers had long chronicled controversies with alienating socially-owned assets in Kosovo (OSCE 2006a, 2008b), they now heralded the Brezovica land deal as the outcome of an “inclusive, transparent bidding process [that] was conducted in full compliance with Kosovo laws, and incorporated the best international...practices”. Jointly the embassies of the United States, France and several other EU member states expressed confidence that the deal would “create a world-class tourism destination and provide much-needed economic and employment opportunities, in particular for Kosovo Serbs...in the area” (Germany Embassy of Pristina 2015).

Most remarkable of all was that the resort was known for political deadlock. The rights and authority to alienate the socially owned ski resort had been contested for most of the post-war period. Ethnic Serbs, a minority in Kosovo, typically rejected the authority of the government in Pristina. In turn, ethnic Albanians, the majority, rejected the authority of the government in Belgrade (which held effective control in the area before it was ousted by NATO and ethnic Albanian guerrilla in 1999 (Judah 2002, 2009). That deadlock now seemed to have been overcome.

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<sup>382</sup> The other crown jewel being the mineral mines at Mitrovica, another Serb enclave, which borders Serbia (OSCE 2008b).

<sup>383</sup> Kjartan Björnsson (NL3).

This chapter investigates why and how the Brezovica land deal occurred as a case study on what drives change in land alienation governance in an area known for limited statehood problems since the beginning of quadruple transition. It traces several attempts at alienating Kosovo's ski resort, and how actors moved from a privatization model and political dead-lock, to a public-private partnership that was seen to be inclusive. It shows how this process emerged through trial and error, and how Strpce and Pristina enabled the signing of a deal in a way that was seen to be transparent and inclusive, but also left much uncertain about the deal's implementation.

### *Before 1999*

The ski resort at Brezovica lies in the heart of Kosovo's Sharri Mountains, a National Park. Its northward facing slopes are one of South Eastern Europe's few that enjoy steady snowfall, making it competitive with nearby resorts in Bulgaria and Macedonia. While secluded, it is not far from cities: it is about half an hour car drive from the nearby cities of Kosovo's central plateau, Prizren and Ferizaj, and an hour from Kosovo's capital Pristina, and Macedonia's capital Skopje.

Tourism development began here in 1954. It remained small-scale until Belgrade provided resources for more ski lifts and greater hotel capacity. The resort hosted International Ski Federation events in the eighties, yet the next decade saw "a lack of meaningful investment". Those years of Yugoslavia's break-up were painful, as INEX, while keeping the management rights oversaw the steady decline of the resort's infrastructure and ability to attract winter tourism (GoK 2014).

### *Underinvestment and encroachment: 1999-2005*

Following the end of conflict in 1999, the nearby town of Strpce became one of the last in Southern Kosovo that had a Serb majority. At the time its population was estimated to be roughly twelve thousand. Albanians and Serbs had lived together in Strpce's valley prior to conflict, yet just as the

demographics had shifted toward a Serb majority,<sup>584</sup> so had the security situation: the international community believed it necessary to keep the peace with UN police patrolling the streets of Strpce and KFOR Brezovica's slopes (NATO 2012).

For tensions remained around the ski resort. The SOE, INEX-Skijaliste Srbija retained control and strictly hired people of Serb ethnicity. In the early years after the war, ethnic Albanians allegedly pressured one another not to buy from local Serb companies based around the resort.<sup>585</sup> Over time, these tensions appeared to dissipate. By 2007 reportedly over up to 100.000 visitors, mostly Kosovar Albanians, visited Brezovica (Bilefsky 2007). A local estimate was that ethnic Albanians were about 90 per cent of the clientele by 2015.<sup>586</sup>

Still the resort faced a highly uncertain situation. One source of this was biophysical. Brezovica was losing its war of attrition with the mountain environment after a decade of underinvestment. How long its ski lifts could keep running was an open question. Despite the return of clientele after the conflict, fewer and fewer lifts were in operation every year. This was also a result of power cuts. These in turn resulted from unpaid electricity bills (electricity was supplied from non-Serb majority areas).<sup>587</sup> As a result, INEX was reportedly not doing much more than running a break-even business (if it managed to do that at all) in the four winter months that it could generate rents. It thus depended on the Serbian government for keeping the few remaining lifts in operation.<sup>588</sup> Also the hotel infrastructure was poorly maintained. INEX and the Government of Serbia (GoS) in Belgrade repeatedly promised investment for renovations but little (physical) evidence of this suggests that the resources ever arrived at Brezovica.<sup>589</sup>

Another source of uncertainty was the apparent lack of respect for land rights around the resort. Like elsewhere in Kosovo, a situation of unregulated land access endured after conflict. As tourism returned to Brezovica, a host of new shops, restaurants, hotels and bars were built on, or near

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<sup>584</sup> In 1991 the demographic composition between Albanians and Serbs was roughly 33/66 yet by 2000 it was over eighty percent Serb (OSCE 2000:3).

<sup>585</sup> Restaurant owner (AL38), Strpce, 28.09.2015.

<sup>586</sup> Restaurant owner (AL38).

<sup>587</sup> Interview Kosovar official 3 (NL), Pristina, 02.06.2015 cf. (KIM 2015).

<sup>588</sup> Based on observations of interviewees in Strpce. Reliable statistics from INEX could not found.

<sup>589</sup> Ivica Tanjasijevic (NL35).

Brezovica's land, while weekend houses appeared along the road from Strpce to Brezovica. Typically, these weekend houses were built and used by ethnic Albanians from the nearby city of Ferizaj and capital of Pristina. While the strip of land along the road became informally known as the 'Weekend Zone', local land use regulations seemed to become empty shells. By the fall of 2015, the municipality estimated that there were about 250 'objects' in this weekend zone; it lacked data about how many of these had acquired building permits.<sup>590</sup>

The encroachment problem was partly attributed due to "no one" in the municipality issuing building permits during the UNMIK period.<sup>591</sup> This lack of enforcement in turn could be attributed to a lack of clarity on which land use rules and land rights ought to be enforced. This, according to Strpce's urbanism department, was a result of relevant "data on permits and [land] ownership" having been taken to Serbia following NATO's intervention in 1999.<sup>592</sup>

Apart from the biophysical conditions, lack of resources and enforcement of land use regulation, time did not appear to run in favour of the resort, and by extent Strpce's community. After years of underinvestment and poor regulation, the pressure to ignore formal rules increased. Meanwhile, Brezovica's tourism offered insufficient job opportunities and the population continued to shrink overall. Many Serbs left Strpce, and between 2000 and 2015, Strpce's community declined by almost half, leading to a situation where, according to the OSCE, the Serbs were almost a (large) minority (OSCE 2000, 2015).

All of the above made it increasingly clear to those working around Brezovica that the ski resort needed investment, not to mention clear and enforced land rights, if Brezovica, and Strpce's community, were to have hope of (economic) survival.<sup>593</sup>

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<sup>590</sup> This estimate was possible as a result of the Kosovo-wide legalization effort (see last chapter). Interview Raif Bajrami, director of urbanism department (NL.38), Strpce municipality, 28.9.2015.

<sup>591</sup> Ilica Tanjasijevic (NL.35).

<sup>592</sup> Raif Bajrami (NL.38).

<sup>593</sup> Restaurant owner (AL.38).

## *The first attempts at alienation: privatization: 2005-2008*

In 1999, UNMIK had awarded the rights to alienate SOEs in Kosovo, including INEX's socially-owned hotels and ski facilities, to the Kosovo Trust Agency (KTA). The KTA's eight-member board, based in Pristina, would decide which assets to privatize, and when. In theory its jurisdiction did not extend to properties that were in a restitution process (Kretsi 2007). In practice this was less clear. Further, the UNSRSG in Kosovo was positioned, by virtue of his mandate, to veto any privatization - particularly those that seemed threatening to Kosovo's fragile peace (UNMIK, 1999).

Brezovica's privatization process was however complicated by several factors. Firstly, the number of assets around Brezovica that could be privatized was limited by encroachment. Internally Displaced Persons (IDPs), mainly Serbs who had fled the cities of Kosovo's central plateau, had occupied some of the INEX hotels along the road to Brezovica and turned them into make-shift homes.<sup>594</sup> Since these hotels were on the KTA privatization list, they could possibly be included in a privatization deal. However, privatizing these particular assets prior to completing the restitution process for these IDPs was against the UN mandate. This de-facto shortened the list of assets that could be alienated. This, and the risk of encroachment, made the resort potentially less attractive to potential investors.<sup>595</sup>

Secondly, local Serbs distrusted the KTA and the Albanian controlled governments in Strpce<sup>596</sup> and Pristina. Many feared privatization would amount to a "take over" of the ski resort and result in "15,000 Serbs" losing their jobs, especially if it would occur under an independent Kosovo (Bilefsky 2007). Privatization attempts were indeed "postponed upon the request of Mayor (of Strpce) and managers Brezovica resort" (Presidency of Kosovo, 2012).

Thirdly, the Government of Serbia undermined the KTA's efforts. The Serbian government had its own privatization agency (SPA), and, according to one expert, "every time they [the KTA] announced a bid, Belgrade would announce its own privatization process. This...confuse[d] potential

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<sup>594</sup> Interview anonymous Strpce citizen (AI.40). The OSCE estimated the IDPs in Strpce to number around 700 (OSCE 2010).

<sup>595</sup> Anonymous Strpce citizen (AI.40); Ivica Tanjasijevic (NI.35).

<sup>596</sup> Strpce's Serbs did not participate in the (2007) municipal elections, which meant the Albanian minority in the municipality could elect the mayor (Knaus and Zaum 2013:233).

investors to such an extent that the privatization process failed”.<sup>397</sup> In response, the UN attempted to persuade Serbia to cooperate with the KTA’s alienation attempts with the prospect that further economic development in Strpce would help encourage return of Serbs who had fled after conflict. However, this argument appeared to fall on deaf ears. The GoS evidently was unwilling to accept an alienation process that it did not control, even it would recognize that Brezovica could anchor Strpce’s Serbs economically. An ex-minister of Trade and Industry (MTI) blamed “the Serbian government in Belgrade” for being “utterly obstructive” from the very first attempt at alienating Brezovica.<sup>398</sup> As for Strpce’s Serbs: even when its representatives seemed ready to engage with the privatization process, they invariably changed their mind. The UNSRSG, Joachim Rucker, understood that they were “under strong influence from Belgrade”. They first agreed to participate, but “subsequently said, no please do not go ahead after all. Let’s wait for [resolving Kosovo’s] status”. To Rucker, this was

“why we say that it is not possible to achieve significant economic progress and economic development without status, especially in these areas. Even though the lack of economic development and lack of jobs seems to be the single most important reason why Kosovo Serbs are not returning in greater numbers [to Strpce]...I think it is an example of how the conditions, which are deplored are at the same time created”.<sup>399</sup>

I.e. without clarity on Kosovo’s international legal position, the rights to alienate Brezovica would remain contested, the privatization process would not move forward, and reinvestment into Brezovica could not occur. The UN thus decided to first clarify Kosovo’s final status.

Just as the KTA’s second attempt at privatizing Brezovica fizzled, it was decided that the UN would leave Kosovo. The general elections in November 2007 were won by the nationalist PDK-party, which was led by Hashim Thaci, the ex-political head of the KLA, who promptly announced he would imminently make Kosovo’s independence a reality (the GoK declared independence in February 2008). Consequently, the KTA board found itself in no position to make a third attempt at privatization. By December 2007, the board agreed to suspend Brezovica’s privatization process until

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<sup>397</sup> Expert involved with the BRDP (AI.41).

<sup>398</sup> Interview Bernard Nikaj, ex-minister for trade and industry (MTI), GoK, (NI.39), Pristina, 29.05.2015.

<sup>399</sup> Interview with Joachim Rucker in Relief Web (2007).



Spring 2008 (B92, 2008). Most of the KTA staff departed from Kosovo. It de-facto ceased its activities.<sup>600</sup>

### *Toward inclusion of Strpce's Serbs and the EU blueprint solution: 2008-2012*

The declaration of independence proved to be an influential event on the stymied process of privatizing Brezovica. It led to a process of clarifying which authority was to determine Brezovica's boundaries and decide on its alienation.

This was in part because the declaration prompted a complete overhaul of Kosovo's system of laws, governance and decision-making bodies (see previous chapters). A new privatization body, the Kosovo Privatization Agency (PAK) essentially took over the KTA's role in late 2008 (PAK 2008). Like the KTA, the PAK was legally obligated to facilitate privatization. It also had an eight-member board, but now most of its members were appointed by the national assembly, while the International Civilian Representative (ICR), the successor of the UNSRSG, appointed three.<sup>601</sup>

The ICR was a Dutch diplomat, Pieter Feith, who was also the EUSR (see chapter 2). He was mandated to oversee Kosovo's transition to a non-supervised sovereign nation over a period of four years. Like his predecessor UNSRSG Rucker, Feith was to be neutral over the future status of Kosovo, and whether Kosovo's independence was valid. Brussels believed Feith needed this neutral stance to avoid being seen as partial to any (ethnic) group interest, and in particular, to “build bridges” between the two communities in Strpce.<sup>602</sup>

However, Feith, and members of his team recognized three problems, that had plagued the KTA's attempts at privatization, and sought to resolve each.

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<sup>600</sup> <http://Kta-Kosovo.Org/Html/Index.Php> (last checked: 13/06/2018). Much like the decimated UNMIK, the KTA continued a shadow life after February 2008. It formally still considered itself to be the lawful authority for privatization in Kosovo. Interview Andrea Capussela (NL.2).

<sup>601</sup> Article 12, Law No. 03/L-067 on the Privatization Agency of Kosovo, 2008.

<sup>602</sup> Kjartan Bjornsson (NL.3).

First and foremost, unlike the UN, Feith and his team were not as interested in "the political side of managing Kosovo" and not as uninterested in "the economics". They concluded that the KTA-led privatization attempts had failed because of "concerns that Serbia would not approve". The UN's concern with the politics of stability and institution-building (in that order) had "nothing [to do] with a vision [of how] to develop Kosovo."<sup>603</sup> In particular, they found that basic information, including about the physical boundaries of Brezovica's assets, was missing. That made it conceivably much harder to give investors a clear idea of the spatial dimensions of the land rights they would acquire, and where they could build. To resolve this issue, the EC decided to finance a study that would clearly indicate the spatial dimensions and characteristics of a new Brezovica development project.<sup>604</sup>

Secondly, Feith at the same time recognized the risks of rent-seeking that evidently existed in other privatizations that had been launched by the KTA in preceding years. Feith thus directed his appointees in the PAK to "block any proposal" that appeared partial to sectional interests. Though the three internationals' votes on the PAK board were insufficient to veto "fishy" privatization proposals, Feith's appointees could threaten to pass on the details to EULEX investigators. This accountability mechanism evidently proved sufficient to control the PAK and potential rent-seeking.<sup>605</sup>

Thirdly, Feith went to Strpce shortly after Kosovo declared independence in 2008. This was to encourage local Serbs to participate in voting in the first local elections that Kosovo organized since independence. He still stuck to the old UN line that Brezovica will be privatized ("so that young people who are looking for jobs will have the most use out of it") yet underlined that this would only happen through the agreement between Pristina and Belgrade (B92 2009).

The local Serb majority in Strpce ended its boycott of municipal elections of organized by Kosovo-based institutions in 2009 (Knaus and Zaum 2013:233). The head of a local Serb party (SLS), Bratislav Nikolic became Strpce's mayor. Even as his voters evidently understood that there was no

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<sup>603</sup> Lorik Fejzullahu, head of the PPP department, MINFIN, GoK (NI.37), Pristina, 03.06.2015.

<sup>604</sup> Kjartan Bjornsson (NI.3).

<sup>605</sup> Andrea Capussela (NI.2) cf. chapter 2.

alternative to cooperation with the GoK<sup>606</sup> Nikolic recognized that "[e]mployment is the biggest problem in Strpce", and that finding a new investor for Brezovica was the main way to solve it.<sup>607</sup> Strpce officials also recognized that by choosing to participate in the elections they created a basis for cooperation with the Government in Pristina on alienating Brezovica.<sup>608</sup> Moreover, illegal construction was seen to have worsened in the weekend zone in the period that Strpce's Serb boycotted the municipal elections.<sup>609</sup> At the same time the GoK began to "take an extra step" in "engaging with the Serbian community [in Strpce]... including [by] giving them the rights [to co-govern] out of the Ahtisaari package." This became a basis for cooperation on land alienation governance between Strpce and the GoK.<sup>610</sup>

Meanwhile, the EUSR had been disappointed with the first consultants that it had hired to propose a Brezovica development project.<sup>611</sup> It therefore hired Ecosign instead, "a world renowned ski resort design firm...to undertake an extensive study of the area and assess its development potential" (GoK 2014). From 2010 to 2012, the Ecosign project had begun exploring "all options" for alienating Brezovica's assets, including privatization, but also public procurement and public-private partnerships. In reality, locally-based EU officials had by now little confidence that privatization (by the PAK or otherwise) would work. As the EUOK's head of operations at the time noted: "we felt that before moving ahead with privatizing something [Brezovica's assets] worth absolutely nothing...we could come up with a [different] concept that could offer an opportunity to solve all the other issues."<sup>612</sup> In other words, the EUSR believed a blueprint development plan for Brezovica could fix all those outstanding "issues".

These "other issues" related to the Serb control over Brezovica's ski resort. According to the same official, the EUSR's team "thought that if Brezovica would be privatized...it might be a cause for

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<sup>606</sup> Bernard Nikaj (NI.39).

<sup>607</sup> Ivica Tanjasijevic (NI.35).

<sup>608</sup> Idem.

<sup>609</sup> Raif Bajrami (NI.38).

<sup>610</sup> Bernard Nikaj (NI.39).

<sup>611</sup> Kjartan Bjornsson (NI.3).

<sup>612</sup> Idem.

conflict. The KTA [had] tried to talk to [persuade] the local authorities and they failed.”<sup>613</sup> This was also about avoiding the question of alienating socially-owned and other assets along the existing road to Brezovica through expropriation, which they considered “not good for...people who might have had land ambitions on that road”.

Moreover, EU officials believed privatization was no longer a very attractive option for investors. With just two out nine lifts still in operation by 2012, they expected the ski resort could be only sold for “very little” (Marzouk 2012). Moreover, they believed that in general “privatization usually had a marginal impact on economic development [in transition contexts]. The real growth, when it happens, comes from new initiatives, not refurbishing old rusty facilities. Of course, when SOE land comes available it can be used for new investments, but old facilities don’t produce that kind of growth.”<sup>614</sup> Thus privatization of the ski resort was left open as a possibility in the Ecosign blueprint, but it was not the preferred option in the development plan (figure 20).<sup>615</sup>

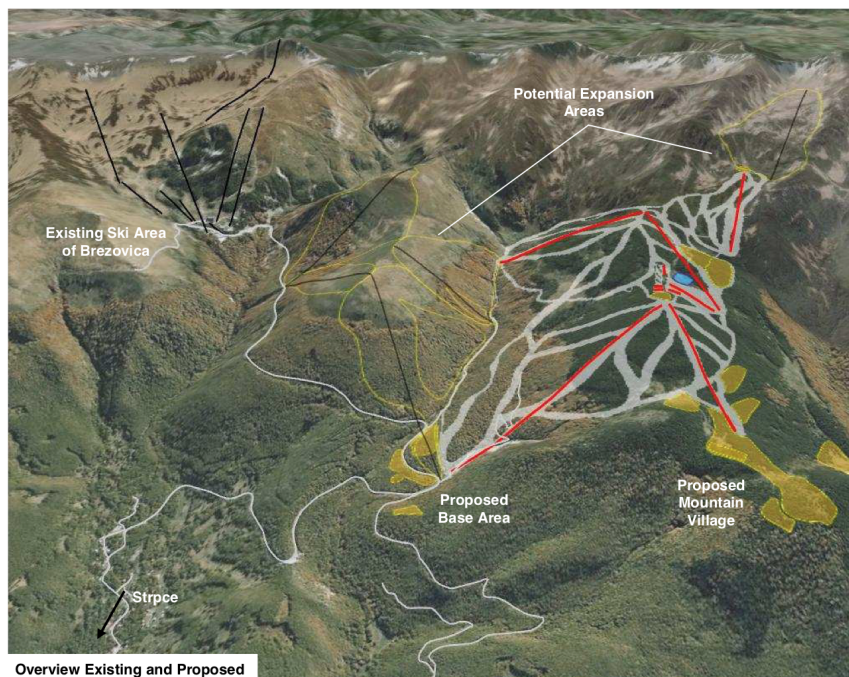


Figure 20: Blueprint of the Ecosign Brezovica Development plan (2011:6).

<sup>613</sup> Idem.

<sup>614</sup> Interview EU expert (AI.42), Sarajevo, 13.10.2015.

<sup>615</sup> Lorik Fejzullahu (NI.37) cf. (Ecosign 2011).

In February 2012 Ecosign presented its plan for redeveloping Brezovica ski resort. With prime minister Thaci and the EUSR in attendance, this was announced to be the “blueprint of a year-round tourist development”. The planned location lay “west of the existing ski centre where 230 million Euro will be invested and approximately 3000 people will be employed” (NATO 2012). The EU-funded and endorsed blueprint solution for Brezovica’s investment problem thus intended to avoid the political deadlock around the existing facilities Brezovica, and to kick start the economic revitalization of Strpce.<sup>616</sup> An ex-minister for Trade and Industry summarised: “basically the EU was thinking not to deal with what’s currently there, but to develop a new resort on the mountain which could not be questioned by the local population or anybody else.”<sup>617</sup>

### *The ISC and the possibility of a public-private partnership: 2011-2013*

When the plan was presented in February 2012, EU officials were confident that they had “nailed it”.<sup>618</sup> After all, the blueprint was given explicit endorsement by the Inter-Ministerial Steering Committee (ISC). This was a body created by Prime Minister Thaci in 2011 and tasked to set up the institutional conditions needed for attracting an investor to Brezovica. Crucially, just as the Ecosign blueprint was presented, the GoK further authorized the ISC to decide on the alienation and expropriation of the INEX assets at Brezovica, including its land, and on how alienation should occur.<sup>619</sup> By assuming authority over a possible alienation process of Brezovica, the ISC implicitly challenged the jurisdiction of the PAK, SPA and GoS over the SOE. Nevertheless, outwardly the ISC stuck with the Ecosign-blueprint and PAK-led privatization as a possible way to attract investment and alienate Brezovica.<sup>620</sup>

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<sup>616</sup> Kjartan Bjornsson (NI.3).

<sup>617</sup> Interviewee 7.

<sup>618</sup> Kjartan Bjornsson (NI.3).

<sup>619</sup> It decided to empower the ISC with authority to take “all necessary measures to...prepare expropriation of immovable property...including real estate [of the] social enterprise “INEKS- SAR PLANINA- Brezovica” (Government of Kosovo 2012).

<sup>620</sup> EU expert (AI.42).

The ISC members included several GoK ministers, including the minister for Trade and Industry (MTI).<sup>621</sup> Two ISC members held veto rights: one was the finance minister, and the other was Strpce's mayor. This was a notable difference with the actor composition of the privatization bodies that claimed the right to alienate Brezovica. Strpce's Serbs could see the ISC as a more inclusive land alienation institution. Indirectly, the ISC's own rules dictated that they had to account for the concerns of Strpce's voters. For as his deputy affirmed, the mayor wanted to be "open" to his voters' concerns regarding Brezovica. He had made it very clear to them that "if" the process to alienate Brezovica would "not [be]] going in the direction of the best interest of the citizens, Serb or Albanian" then he would use his "veto power" in the ISC to block it.<sup>622</sup>

In February 2012, the ISC had agreed to implement the EU-funded blueprint solution for Brezovica, yet by then the ISC had already begun abandoning it. It saw several downsides.

Firstly, the ISC members disliked it that the Ecosign plan still accounted for a privatization deal that would need to be negotiated with Serbia (see above). In fact, its GoK members wanted to exclude the GoS from the equation. As one GoK official noted: "for us (the) Serbian [government and its] Ministry of Kosovo is not an actor" relevant to the Brezovica alienation process. It considered the GoS' Kosovo Department "an external ministry" that had nothing to do with it.<sup>623</sup> Strpce's municipal government disliked the negotiated privatization option because many who owned assets around the resort feared that they could not trust a privatization process to give them a reasonably priced compensation (in the event that their assets would be included in a deal).<sup>624</sup>

Secondly, the ISC recognized that the EU blueprint was a long-term development plan that offered no immediate solution for revitalizing the old resort.<sup>625</sup> The plan hinged on building a new access road and other infrastructure toward the new, uncontested location.<sup>626</sup> Finding the resources for

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<sup>621</sup> Other members were the Minister of Local Government Administration, Minister of Environment and Spatial Planning. GoK decision 02/41 (on ISC formation) 10.10.2011.

<sup>622</sup> Ivica Tanjasijevic (NL35). As soon as the ISC was formed, the municipal council of Strpce gave a majority approval. Predrag Grbic, municipal assembly leader, Strpce municipality (NL36), Strpce, 28.09.2017.

<sup>623</sup> Interview Kosovar official 3, (AL39), 02.06.2017.

<sup>624</sup> Bernard Nikaj (NL39).

<sup>625</sup> Expert involved with the BRDP (AL41).

<sup>626</sup> Bernard Nikaj (NL39).

such infrastructure would take time, which the ISC feared it did not have. The longer it took to lay the groundwork for an investment, the closer Brezovica came to its slow economic death, and with that, the best chance to economically anchor Strpce's community.<sup>627</sup> Moreover, the EU offered no financial resources to support building the infrastructure for the new resort, nor technical assistance to help bring the Ecosign proposal to outside investors.<sup>628</sup>

The GoK asked USAID to provide this technical assistance instead.<sup>629</sup> USAID agreed to fund consultants for "legal work, feasibility, investor exploration and promotion" (USAID 2012) and from 2012, it provided support for promoting the Ecosign deal. However, the Ecosign plan failed to attract bids after the Ministry of Trade and Industry (MTI) launched the tender process and after it had actively sought to attract attention to the Ecosign proposal at international investor conferences. As an expert involved in the process noted, the GoK thus learned that:

"potential investors wanted an investment track record [of similar projects] so to see if their investments are working [in Kosovo]. But without the investment forthcoming, there could be no track record. This became a kind of a chicken-egg problem."<sup>630</sup>

The PAK-led privatization process could not offer this track record. Since 2008, the PAK was inhibited by controversy and dysfunction.<sup>631</sup> However, another way to alienate Brezovica was emerging: a lease via a public-private partnership (PPP).

It was eventually acknowledged by the ISC that a PPP had the advantage of avoiding the thorny question of land ownership at Brezovica (see below). The land within the Ecosign footprint was partly claimed by the state (Kosovo government) and partly by the local municipality, but the exact boundaries of who owned what were not yet determined. However, if the ISC leased out the land to

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<sup>627</sup> Ivica Tanjasijevic (NL.35).

<sup>628</sup> Feith left the EUSR/ICR position in 2012 when the ICR mandate ended.

<sup>629</sup> Bernard Nikaj (NL.39).

<sup>630</sup> Expert involved with the BRDP (AI.41).

<sup>631</sup> The PAK chairman was murdered, another arrested, and that there was a string of proposed dodgy deals. According to Capussela, the three ICO-appointed foreign directors (including himself) vetoed "several suspect transactions." Moreover, the "chairman of the board during his tenure "represented the leading faction of the elite and had influence over other board members...[it] certainly tended to favour bidders connected to the elite" (Capussela 2015:205).

the investor this question could be buried for however long the lease would be.<sup>632</sup> Still, for the ISC to even consider a PPP, it was first required that this was legally possible as way of alienating land.

Separately from the question of alienating Brezovica, a PPP law was adopted in 2009. This was soon amended after USAID had started funding a new law.<sup>633</sup> Also the EC had demanded the adoption of a PPP, as well as amendments in progress reports (since 2007).<sup>634</sup> However, afterwards the EC continued to urge caution in using PPPs.<sup>635</sup> There is no evidence that the EU's urging for more PPP reform (and calls to enhance the transparency and accountability of the procedure<sup>636</sup>) was strategically orientated towards enabling a PPP in Brezovica.<sup>637</sup> Indeed, Andrea Capussela, who was economist at the ICR/EUSR up to 2011, believed that:

“a PPP was problematic. Structurally, there was a huge risk of socialising losses and privatising profits. Depending on the terms of contract, the private sector could prevail over the duties of the public body by negotiating an unfair division of the losses and profits. In the context of Kosovo, this could be especially problematic as the public interest is often poorly protected.”<sup>638</sup>

By contrast, USAID continued its support for further amending and promoting PPPs in Kosovo (GoK 2014; USAID 2015b). Kosovo's first actual PPP appeared in 2010: the GoK signed one with a Dutch-American consortium to redevelop Pristina airport. The deal, which was implemented the following year, could be described as a success for the GoK, as the investors decided to invest more in the airport infrastructure than anticipated.<sup>639</sup> It set the beginning of a track record for PPPs.<sup>640</sup>

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<sup>632</sup> Kosovar official 3 (AI.39). See next section below.

<sup>633</sup> The reasons USAID supported PPPs was mostly for budgetary reasons: “in 2009, the perception was that the GOK was living beyond its means, funding the shortfall by drawing down its cash reserves and using ‘one-off’ sources of revenues, such as the sale of state-owned enterprises (SOEs), to fund the deficits. This was viewed as an ominous trend that would restrain future capital spending and limit the growth of grants to municipalities. In the context of tight resource and budget constraints, PPPs were viewed as an appropriate alternative mechanism to fund priority public infrastructure at both the central and municipal levels” (USAID 2012).

<sup>634</sup> The EU had first pressured Kosovo to amend its legal framework to enable “large investments and PPPs” in 2007 (European Commission 2007b:39) and continued to do so until 2010 (European Commission 2008b:45, 2009b:39, 2010b:35).

<sup>635</sup> The EU warned Kosovo that “Public-private partnerships entail a delicate balance of responsibilities and obligations between the private and public sectors. There have been cases elsewhere where the result has been unbalanced for the public sector” (Stabilisation and Association Process Dialogue (SAPD) 2011:10).

<sup>636</sup> After adoption of the first law the EU stipulated that Kosovo could not use a PPP for unsolicited tenders. The EC insisted the law needed to be amended to strengthen the accountability and transparency of the public procurement review body that would review any concerns (about rent-seeking and fraud). The law was amended accordingly. Lorik Fejzullahu (NI.37).

<sup>637</sup> Lorik Fejzullahu (NI.37).

<sup>638</sup> Andrea Capussela (NI.2).

<sup>639</sup> Lorik Fejzullahu (NI.37).

<sup>640</sup> Expert involved with the BRDP (AI.41).



Thus when it was founded in 2011, the ISC could seriously consider alienating Brezovica through a PPP, not through privatization.<sup>641</sup> The problem was that the GoK concluded no PPPs after the airport deal. This was why all options to alienate Brezovica, including privatization and the Ecosign blueprint solution, formally remained on the table.<sup>642</sup>

### *The lessons learnt that led to the deal: 2014-15*

In early 2014, USAID's Partnerships for Development (PfD) project dedicated financial and technical support for the Brezovica Resort Development Project (BRDP) and the implementation of the ISC's decisions. It immediately helped the GoK establish a special Project Implementation Unit (PIU), which together with USAID-funded consultants "scratched their heads"<sup>643</sup> about past failures to attract an investor to Brezovica. They drew several sets of lessons.

A first set of lessons that the PIU drew, with help of USAID, was to make the BRDP a PPP and to formally postpone a decision on who would own the land within the footprint by leasing out the land for ninety-nine years. As one involved expert explained:

"we [i.e. the consultants and members of the ISC] said that what happens to the property after 99 years is not our concern, because we'll all be dead by then."<sup>644</sup>

The ISC agreed, and would grant the "development rights", i.e. the management and exclusion rights to the land at Brezovica to a selected bidder for ninety-nine years (GoK 2014).

Another lesson learnt concerned the difficulty of pricing Brezovica's assets. It was clear to most observers that INEX assets' at Brezovica, notably the decades-old ski facilities, had by now

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<sup>641</sup> Already in 2011 the ISC decided that decisions to alienate Brezovica would be "in accordance with the processes of public-private partnerships" (Government of Kosovo 2011). The decision mentioned neither the PAK nor the option of privatization. USAID long held a more favourable view on PPPs compared to privatization. USAID consultants had tried reforming the PAK (USAID 2012), but they ended up dropping this as a viable route to alienate the resort and other socially-owned assets. EU expert (AI.42).

<sup>642</sup> Kosovar official 3 (AI.39).

<sup>643</sup> Expert involved with the BRDP (AI.41).

<sup>644</sup> Idem.

depreciated to the value of "scrap metal".<sup>645</sup> More tricky was pricing the land itself. An international expert explained this was because Brezovica's real estate market was so "illiquid" and much of the price information used by local valuers was from the Yugoslav era, and "therefore incomplete". Moreover, comparing Brezovica's land prices to those on the international ski resort market was also problematic:

Even if you have a properly functioning property market for ski resorts, people don't buy them every day. So, what data do you really have to assess the value of ski resorts, or their component parts, like the ski fields?<sup>646</sup>

Given this difficulty of putting a price on the INEX assets at Brezovica, the ISC decided that under the terms of lease, the prospective investor would only be required to pay for the demolition of the buildings at the resort and the SOE hotels that would be expropriated.<sup>647</sup> Still, to carry out an expropriation process an accurate valuation of the real estate was required if anyone subject to expropriation was to trust it. The ISC decided to refer to earlier expropriations that the GoK had conducted, as well as prices paid on informal real estate markets. Thus it would determine the 'market price' and compensation for expropriation in spite of the lack of comparable prices. To add credibility to this valuation process, consultants (paid by donors) would independently verify the accuracy of the GoK land valuation.<sup>648</sup>

A third set of lessons that the PIU drew was that the EU-funded Brezovica development blueprint idea was partly "unfeasible": no investor could be expected to willingly invest in a resort without any existing infrastructure in place.<sup>649</sup> On the other hand, the PIU regarded the blueprint useful to define the spatial boundaries – or footprint – of the resort (Ecosign had delineated 3364 hectares) (GoK 2014). Yet instead of the investor being told what it should develop, as the PIU found had been the case with the Ecosign plan, it would largely leave it to the selected bidder how it would develop the

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<sup>645</sup> Idem.

<sup>646</sup> International expert (AI.43), 10.06.2015.

<sup>647</sup> Restaurant owner (AI.38).

<sup>648</sup> International expert (AI.43), 10.06.2015. At the time of field research (in 2015), this expropriation process had not yet started. However, although it was highly sensitive, the valuation process appeared to be accepted by those who were subjected to it (idem).

<sup>649</sup> Bernard Nikaj (NL.39).

land and use its exclusion rights within the footprint.<sup>650</sup> In other words, the PIU wanted to offer the potential investor great discretion within the footprint. However, it also wanted to avoid a situation of unregulated land access, where authorities gave developers so much leeway that it created risks of illegal construction and environmental pollution: a situation that had emerged at Prevala, another mountain town in a valley nearby Strpce.<sup>651</sup>

The ISC thus opted to put new institutional rules into use would make obtaining construction permits as predictable as possible for the potential investor at Brezovica.<sup>652</sup> Since the development footprint lay entirely within an environmentally rich but fragile area which had been designated a national park, developers would be required to obtain construction permits locally and environmental permits at the national level.<sup>653</sup> Yet USAID and GoK experts feared that spreading the responsibility for authorizing construction within an environmentally protected and economically attractive area like Brezovica “would have been an invitation for corruption”. This risk was believed to scare off investors. The ISC thus decided to update the spatial plans so that all land within the footprint would be re-designated as land in the national interest: i.e. category-III construction land (a category created by the new spatial planning legislation adopted in 2012<sup>654</sup>). That meant the investor would be required to request relevant permits only at the national level, i.e. at the MESP, and not also at a local level. The ISC hoped that by declaring all land as category-III construction land, room for land rent-seeking would be minimized.<sup>655</sup>

However, this ISC decision alarmed a pair of environmental NGOs. They contended that since the footprint lay within the borders of Sharri National Park, the resort would cause damage to the mountain environment. The ISC organized hearings with these NGOs about this risk and insisted that it would only select bids from investors with a proven record in protecting mountain

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<sup>650</sup> Expert involved with the BRDP (AI.41).

<sup>651</sup> Idem.

<sup>652</sup> Idem; and Kosovar official 3 (AI.39).

<sup>653</sup> Kosovar official 3 (AI.39).

<sup>654</sup> See last chapter. Kosovar official 2 (AI.31).

<sup>655</sup> Expert involved with the BRDP (AI.41).

environments.<sup>656</sup> After the hearing the NGOs did not critically engage the Brezovica alienation effort any further.<sup>657</sup>

Finally, the ISC learnt that it was paramount to include the local community in Strpce in the decision-making process around alienating Brezovica, both prior to the deal and during its implementation.<sup>658</sup> Some local Serb citizens were concerned that they would not be eligible for new jobs in the resort (as they wagered it would still likely cater to an Albanian speaking clientele). Further, if their assets were expropriated by the ISC, they feared being left with no means of income, and thus being economically displaced. Thus, some in the municipal council tried to push the ISC to make the prospective investor accept an ethnic employment quota in the new resort. However, these were rejected by the municipal council majority.<sup>659</sup> Instead, the ISC opted to win the trust of the local community by offering debt relief for the outstanding electricity bills of local Serbs (in return for future payments). This evidently stimulated the ongoing cooperation between Strpce's officials and the GoK.<sup>660</sup> The PIU also organized stakeholder meetings between Strpce citizens and the ISC to take in the feedback and concerns about the Brezovica alienation process.<sup>661</sup>

All of the above lessons were incorporated into the final tender. Firstly, the BRDP announced that it was looking for an investor ready to develop “a year-round destination mountain resort” as Ecosign had proposed. Secondly, it also needed to have “local and national economic impact through the effective medium-term development of the site”. This spoke to the concern of the ISC to re-start economic development in the area as soon as possible. Moreover, the “[p]roject should minimize displacement and seek to maximize local community participation”, which spoke to the concern of including the local community into the alienation process and the local fear of economic dislocation.

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<sup>656</sup> Bernard Nikaj (NL39).

<sup>657</sup> Idem. According to local NGOs this was not because they were convinced by the GoK's case for changing the rules, but because they failed to convince the international community and the national assembly of their concerns (INDEP 2014). Email exchange with Ec Ma Ndryshe 5.10.2015.

<sup>658</sup> Prior to the deal, the ISC, and especially the mayor began to actively secure the support of the Strpce's population through several meetings with the investor, one of which was attended by the French and American ambassador. Interviewee 6.

<sup>659</sup> Predrag Grbic (NL36).

<sup>660</sup> Kosovar official 3 (AL39)

<sup>661</sup> Idem; (USAID 2015:5).

Thirdly, the investor was to “preserve the natural environment...and apply eco-friendly principles”, thus speaking to the environmental concerns that had been expressed by the NGOs. Finally, the BRDP was to be a “private Sector-Led Opportunity”, which related to the aim to minimize the risk of rent-seeking while giving the developer sufficient scope to develop.<sup>662</sup>

Subsequently, a USAID-funded team of consultants in Pristina and Strpce helped the Ministry for Trade and Industry (MTI) set-up the conditions for inviting investors to submit bids. This led to four bidders expressing interest, two of which actually placed a bid. One carried through with a concrete proposal. This was the French-Andorran consortium led by CdA. The consortium was selected for meeting the criteria of the tender and especially because CdA was known for involving local communities in building mountain resorts.<sup>663</sup> Subsequently, private consultancy, Huron (paid by USAID), provided “extensive support to the MTI, ISC, and PIU in the negotiation and finalization of the terms and conditions of the BRDP PPP Agreement with the selected bidder.”<sup>664</sup> This included verifying compliance with the proposed land deal. Huron would help ensure that CdA would secure and provide letters from its co-investors (which were inter alia French and German development banks, the EBRD, and at least one Kosovo-based commercial bank) to prove their intent to finance the project.<sup>665</sup>

The ISC for its part began to actively secure the support of the Strpce’s population through a number of meetings with the investor, one of which was attended by the French and American ambassador.<sup>666</sup> To avoid any misunderstanding in Strpce’s community, the GoK and Strpce’s mayor, Bratislav Nikolic, explained that the proposed deal was not going to be a privatization, but a PPP. They elaborated that this meant that the distribution of land, partly owned by the state (the GoK) and

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<sup>662</sup> The final BRDP tender noted that a “private operator/developer will be given broad discretion regarding development concept and master plan. The ISC seeks to make this a stand-alone project, with minimal government financial involvement.” (GoK 2014).

<sup>663</sup> Idem.

<sup>664</sup> Huron assisted the ISC with “the community outreach activities undertaken....in Strpce municipality”; “negotiations between the GoK and representatives of the Serbian community” and advised it on “contract review and approval”. It also helped negotiate and prepare the PPP (USAID 2015:5).

<sup>665</sup> Other tasks that Huron supported at this stage included reviewing whether the eligibility criteria were being met; as well as possible revisions of the draft master plan. Idem.

<sup>666</sup> Kosovar official 3 (AI.39).

partly by the local municipality (Strpce) would remain unchanged. Only the expropriated private parcels would be alienated: alienation rights would stay with the ISC; the exclusion and management rights would be transferred to the investor.<sup>667</sup>

The ISC sent a contract for a PPP to CdA in November 2014. Soon after confirming that the “conditions precedent” had been fulfilled, the two parties signed the 409-million-euro contract on 15 April 2015.

### *Aftermath: Serbia as veto player?*

While the deal that had emerged included Strpce’s community, it also excluded: the Government of Serbia and INEX Belgrade. As noted above, the ISC had learnt from UNMIK’s and the EU’s experience to ignore the Serbian government’s claim over the assets at Brezovica. However, in the eyes of the GoS, a possible deal in Brezovica increased the risk that Serbs in Strpce would sell their properties and leave (thus further the further decline of Strpce’s population and possibly threatening their political majority in the municipal assembly). Indeed, in January 2015, Aleksander Vucic, the prime minister of the GoS came to Strpce to discourage local citizens from selling their property (see first epigraph).

The Serbian government and media had long suggested that excluding the GoS and INEX Belgrade from any alienation process to alienate Brezovica would be illegal (it repeated this claim even at times when a Brezovica land deal seemed unlikely) (Danas 2013). Yet Belgrade threatened to obstruct and de-facto veto the deal as it became clear that a deal with CdA was possible. As an EU official remarked, it did not matter that Strpce had begun to cooperate with Pristina. Belgrade still “had no interest in granting its cooperation for free.”<sup>668</sup> Indeed, after the deal was signed, in April 2015, Marko Djuric, head of Serbia’s Kosovo department, announced that

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<sup>667</sup> Idem.

<sup>668</sup> Kjartan Björnsson (NL3).

“(i)t is unacceptable that any plan for Brezovica be implemented which would undermine the existing facilities, or...force...illegal expropriation of land or change the ethnic make-up of the workforce” (Hajdari 2015)

I.e. the GoS particularly feared for the fate of the ethnic Serb workers working at Brezovica ski resort for INEX-Skijaliste Srbija. When asked to comment, a Kosovar official explained why the ISC had not included GoS and INEX Belgrade in the deal:

“we did not want to lose our time or energy with [them]...if we asked Belgrade....Kosovo would not have been independent. Hundreds of SOEs have been privatised which Serbia claims. This case of Brezovica is very similar. They wanted to make [the Brezovica deal] a bigger case [than usual] because there is a [significant] Serbian population living there. But it was not possible to keep things as it was. None of the lifts are certified at the moment. There are just two working lifts, and we worked with the local municipality to revitalize them... Local people just get paid for a few months in the year, they do not pay taxes.”<sup>669</sup>

The Deputy mayor of Strpce expressed a similar sentiment regarding the objections of INEX:

“We cannot allow the rights of 180 workers [at the ski resort] earning an income from business in the footprint to override the deal and supersede the economic development of the whole community. Most of them are close to retirement anyway. What about their kids?...They want reimbursement...But should we lose the entire project because of their rights?...I don’t believe anyone really invested in [the ski resort during] the last 16 years. We need this investment now to create opportunities and a future for our kids.”<sup>670</sup>

As for the ongoing<sup>671</sup> contestation of land alienation authority between the GoS and the GoK, he believed that it would “not ruin the whole process. It is a problem that needs to be solved at a higher level, but for us local economic development is the issue, and it needs to be solved.”<sup>672</sup>

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<sup>669</sup> Pristina repaired two lifts and also restored the resort’s power generation distributor. In exchange the municipality paid some (but not all) outstanding electricity bills to Kosovo Electivity Company (KEK). Kosovar official 3 (AI.39).

<sup>670</sup> Ivica Tanjasijevic (NI.35).

<sup>671</sup> By the end of October, INEX-Skijaliste Srbije publicly “informed Kosovo Prime Minister Isa Mustafa about their intention to launch an investment dispute before international arbitration” at the International Chamber of Commerce in Paris. The SOE claimed that “[t]he decision by the Kosovo institutions on expropriation of the land and property is illegal and contravenes not only international law, but also regulations implemented in Kosovo”(TANJUG 2015). The GoS in Belgrade supported the law and sought “to realize its right to arbitration in the International Chamber of Commerce in Paris.” In response, Edita Tahiri, the GoK’s minister for the Normalization Dialogue with Serbia reacted that UNMIK’s and Kosovo’s regulations stated that the property at Brezovica was designated a “national treasure”, belonging to Kosovo (B92 2015).

<sup>672</sup> Ivica Tanjasijevic (NI.35).

## Concluding remarks

Following the conflict, the UNSRSG-led privatization process in Brezovica was politically deadlocked as Kosovo's status and the alienation rights to Brezovica remained contested. Serbia and the local Serb population distrusted and obstructed the UNMIK-led effort to privatize the ski resort. Yet by the time Kosovo declared independence in 2008, Strpce's population recognized they could not wait for liberal state-builders, Pristina and Belgrade to solve the political deadlock. Alienation had been prevented, yet change had still come to Brezovica: through encroachment, economic depreciation of the ski facilities, and through demographic decline. This ongoing change threatened the future of Strpce's community. By the time the GoK declared independence, the local Serb population of Strpce decided it was necessary to participate in local elections. This, and the GoK's readiness to relieve some of the economic pressure on the community, created a basis for the GoK and Strpce to discuss a solution for their common problem: namely, how to open Brezovica to outside investment and unlock its potential to generate significant rents for the community.

The findings show that after 2008 the status quo situation changed rapidly. For one, consistent financial, technical and diplomatic support from the EU, and later USAID, allowed the GoK and Strpce to try out different ways to alienate Brezovica and to attract investments. Through this trial and error process, they could draw lessons from their failed attempts to attract investment.

Second, in 2011, the GoK and Strpce empowered a new institution, the ISC, to authorize the alienation of Brezovica, and in particular the mayor of Strpce, who was granted veto powers. This indirectly gave Strpce's voters control over Brezovica's potential alienation. At the same time, the ISC agreed to reject the UN and EU-favoured option of negotiating with Serbia and INEX Belgrade over Brezovica. This freed the ISC members from the political deadlock of the 2000s and to look for alternative ways to attract investors.

Third, after attempts to attract an investor to Brezovica, including through externally-driven solutions, repeatedly failed, the ISC learned, and eventually found a solution to the problem it had tried to solve. They dropped the EU-funded blueprint solution that was considered too unattractive to



investor, as well as the privatization option, which was too distrusted, especially in Strpce. Instead, new legislation made it possible to use a PPP lease for Brezovica. This alienation option had an added advantage in that it allowed Strpce and Pristina to postpone a decision on who owned what land at Brezovica. Moreover, new land use rules adopted at a national level allowed the ISC to grant a potential developer broad discretion while minimizing the risk of rent-seeking.

By 2014, the economic, environmental and demographic pressures on Strpce's community had not abated, but the ISC had thus put in place better institutional conditions and had more dedicated technical resources (from USAID) at its disposal to attract foreign investors to Brezovica. Several bids followed, and the deal was signed. Yet uncertainty remained. The ISC's exercise of its newly created authority to alienate Brezovica was still contested by Serbia and it was unclear whether the deal could be implemented.<sup>673</sup> Still, the ISC had little choice but to continue to open access to Brezovica for outside investors.

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<sup>673</sup> This was largely because it was unclear if the consortium would be able to secure the funds it wanted to invest from its co-investors (B92 2015). By early 2016, it was still not clear if it would (Neville 2016; Spahiu 2016b).



# Conclusions

The thesis makes three sets of interconnected conclusions. They are based on the case study research in part II and III and the theoretical framework outlined in chapter 1. All are in answer to the main research question that was introduced in the introduction.

First of all, by looking at the case studies over the long-term, it is possible to conclude that processes of land governance change are slow to emerge during the Bosnian and Kosovar quadruple transition. The actual processes of change – remaking national information systems so that these reliably record land rights; dealing with dysfunctional land use regulation and illegal construction in the capitals of Sarajevo and Pristina; and resolving problems of contested land alienation authority in Trnovo and Strpce – took many years to even begin.

Using Ostrom's rational choice institutionalist analytical framework (see chapter 1), and its concepts of the action situation, rents and rent-seeking, the case study research showed that this was in part because these problems were historically complex and inter-related. It was not just institutions that shaped situational rules, but that also biophysical and community attributes. Jointly they reduced the possibilities for changing situations of unregulated land access. Using the framework, the thesis found how at the outset of peace liberal state builders and domestic governing elites had limited information and few options even as they faced many land governance problems. These included outdated Yugoslav rules that had become empty shells after long neglect; minimal financial and human resources to update land records and regulations; and a pre-existing housing shortage that had been exacerbated by wartime destruction and contributed to unregulated land use and squatting. The inter-connectedness of these problems reduced the scope for change even more. In land registration governance, information about land rights was often already unclear, and became increasingly so due to further illegal construction. Encroachment became rampant on the peripheries of Sarajevo and Pristina, and thus undermined land use governance. Weak land registration (information rules) and

land use governance (boundary rules) complicated questions about who was to exercise authority over alienating valued assets like the ski resorts at Brezovica and Bjelanska mountains.

Thus, jointly these problems contributed to situations of unregulated land access. Moreover, as few institutional rules structured the game of accessing land rents, it was far from impersonal and transparent. Few actors were positioned to hold accountable remaining land governance authority. That created structural opportunities for land rent-seeking opportunities, at least for those who were well-connected to the relevant authorities. In other words, there appeared to be vested political interests in maintaining these situations. Even if reform efforts would emerge, institutionalization was complex due to incomplete legal frameworks and fragmented authority. These problems of land governance could therefore persist after the end of conflict and lock-in status quo situations that endured for years.

Secondly, the case study research suggests that when land governance change processes do emerge, it is when domestic elites recognize the economic impact of unregulated land access. The findings show that when the prospect of economic crisis was linked to opacity in information about land rights, it drove domestic leaders toward land governance change. However, beyond this similar cause for change, land governance change processes appeared different in Bosnia and Kosovo. The case study evidence suggests that in Bosnia recognition and subsequent change processes were driven by Limited Access Order Consolidation, while in Kosovo they appeared to result from Problem-driven Iterative Adaptation. That indicates that Bosnian and Kosovar elites create and institutionalize new rules-in-use in land governance differently: the former can be expected to only change rules if these can be made to align with narrow elite interests and consolidate their rent-seeking opportunities; the latter can be expected to change land governance rules in more inclusive, trial and error processes that have open-ended outcomes. The difference seems to arise from political actors in Kosovo recognizing that its enduring economic predicament leaves ultimately little choice but to reform, including in directions toward an OAO. Its fragility in land governance strongly incentivizes local and national-level elites to

try any possible solutions to increase access to land rents, and accordingly, to cooperate in order to institutionalize changes– even if that means making land governance more impersonal.

The conclusion that Bosnian land governance change can be explained by Limited Access Order Consolidation, while Kosovo’s as Problem-Driven Iterative Adaptation allows for a third set of conclusions. Namely that the possibility of increasing land rents more powerfully explains land governance change than the introduction of a new external agenda, best practice or standard (as hypothesized by the Solution and Leadership Driven Change theory). Observed over a longer period, the possibility of expanding access to land rents appears to give post-conflict communities a strong endogenous reason to collaborate and overcome collective action problems, i.e. to rise above situations of unregulated land access. That gives reason to make a Hirschmanian point, namely that pervasive and enduring problems of unregulated land access in quadruple transition can have a “hidden positive dimension”<sup>674</sup>: Governing elites will be more prone to continue adapting, reforming and opening access to land rents if fragility in land governance persists across multiple areas in a quadruple transition. In such cases, liberal state builders may help lock-in such processes if they can also commit support over the long-term, and adapt their externally-derived solutions to the interests of local governing elites.

The thesis elaborates on these three sets of conclusions by answering its three sub-research questions and clarifying which of the hypotheses (identified in chapter 1) hold.

*The first question was: what drives processes of change in land governance in Bosnia & Kosovo in quadruple transition?*<sup>2</sup>

In both Bosnia and Kosovo, the problems of unregulated land access, caused by the legacies of Yugoslavia’s half-hearted collectivization efforts and its cataclysmic collapse, could balloon in early

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<sup>674</sup> See introduction (37).

transition without being politically noticed. It took time to recognize that problems in land governance inhibited economic activity and access to land rents in particular. Political leaders were often slow to respond as many Bosnians and Kosovars managed to adapt by resorting to informal coping mechanisms since the beginning of quadruple transition. They managed to build homes without obtaining building permits and trade land without titles, often by resorting to rent-seeking practices. Yet in doing so they compounded the institutional weaknesses in land governance. Informal coping mechanisms were often legally insecure, (evidently) costly and added to already inflated problems of unregulated land access. They made antiquated land records even more inaccurate. Unpermitted construction set precedents for further encroachment. Opportunities for formal, title-based land investment became even scarcer; and in places like Brezovica, riskier. Investors learned to stay away.

Secondly, liberal state builders were also initially distracted from the larger problems of land governance. The post-war restitution process absorbed most of their attention as liberal state-builders suspected domestic (political) obstruction. The internationally-backed restitution process helped raise the salience of opaque land records in both Bosnia and Kosovo. Yet the case studies suggest that it was the observed economic impact of this problem that led liberal state-builders to declare emergency and to pressure domestic governing elites to drive changes that would provide a stronger legal foundation for (foreign) real estate investors. Thus change processes in land registration emerged.

However, in Bosnia continued resistance to land registration reform in both entities drove the OHR to see no other solution for avoiding economic crisis than imposing this reform. Along with the similarly imposed construction law, scope and opportunities were thus created to formally access land rents, including for foreign investors, around 2002-3. Yet the case study research suggests that because the pressure of liberal state-builders to impersonalize and liberalize land governance was temporary, piecemeal, and ultimately half-hearted, governing elites could ultimately retain much discretionary authority over land. The cases in Sarajevo Canton show that governing elites retained discretionary control over changing specific land use rules which were important for (potential) land investors. Formally investors were hindered by outdated land use regulations and slow processes to secure land

use and construction permissions. At the same time, there was little prospect of land use rules being changed comprehensively (such as with spatial planning updates) due to formally decentralized decision-making authority. This situation left political power-brokers opportunities to leverage their positions and to expedite specific land investments by ‘correcting’ land use rules. Meanwhile, long-running problems of unregulated land access, like illegal construction and environmental risks, could effectively be ignored, as consistent countervailing internal and external pressures were largely absent (see below). The evidence showed that as land registration reforms were institutionalized, access to land rents was opened, but only for the politically connected. This suggests that when governing elites did drive reforms in land governance, it served to consolidate their control over land rents. The findings also suggest that when disputes arise between governing elites over changing formal land governance authority, constitutional courts function sufficiently to resolve them. This was demonstrated by Izetbegovic’s successful suit against the new RS’ land registry law, and Berilo’s successful suit against the Federation’s attempt to change land use rules in IBTV area. This also indicates that a rule of law for governing elites is a precondition for putting particular rules in-use in land governance in Bosnia. Thus H1<sup>675</sup> can be confirmed with regard to the Bosnian case studies.

The evidence from the Kosovo cases shows that what drove change was the widespread recognition of the economic problems caused by weak land governance. That triggered an enduring (and compared to Bosnia more open-ended) search for possible solutions. However, it still took years for this recognition to emerge. It appeared that the UN, and the broader international community, continued to regard a negotiated solution with Serbia as the preferred way to resolve Kosovo’s problems in land governance. All the case studies show that liberal state-builders and local governing elites recognized this problem-solving approach had failed after the GoK declared independence. Yet this coincided with a deeper realization among Kosovo’s governing elites. With illegal construction still rampant, land records unreliable and land alienation authority in Brezovica contested; they realised that each of these problems kept formal land markets fragile and underdeveloped. National

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<sup>675</sup> H1. Changes are driven by the logic of consolidating a LAO. Data shows doorstep conditions (see p,71) in place before governing elites drive changes intended to consolidate control over land rents.

and local government and also bureaucratic actors (particularly the MESP and Kosovo's Cadastre Agency) were thus seen to actively search for possible solutions and donor funds to support it. Moreover, the research findings in all cases suggest that even when change processes started, it did not make the domestic actors involved complacent about the state of land governance. For many of the problems of unregulated access were linked to economic fragility and to each other. This appears to explain why Kosovo's governing elites remained committed to adapt and find locally suitable solutions. They learnt from successive failures (a dynamic that was especially evident in the Brezovica case study) and/or managed to drive new reforms as earlier land governance changes were institutionalized (as the Pristina case demonstrated: new land registration technology helped make illegal construction identifiable and legalization possible).

In short, the possibility of increasing land rents seemed to more powerfully explain land governance change than an externally introduced solution known in advance, be it a new external agenda, best practice or standard (H5).<sup>676</sup> Yet while in all cases economic concerns thus appeared to eventually drive change in land governance, the Bosnian cases appeared to be driven by the intention to help consolidate governing elites control over land rents (H1). By contrast, in Kosovo particularly after 2008, land governance reform processes seemed to be clearly motivated to resolve problems and to find *any* institutional solution that fitted local contexts, including solutions that might make access to land rents more impersonal and transparent. Thus in the Kosovar cases we can confirm H9.<sup>677</sup>

The second sub-research question was: *who leads these processes and how are these realized?*

The case studies show that coalitions lead and realise land governance change processes. These were not led by a single champion (H6<sup>678</sup>), and were not institutionalized by simply aligning with

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<sup>676</sup> H5. Changes are driven by a solution known from the outset. Data shows a standard, best-practice, agenda, conditionality or technology from an external context inspiring the observed change.

<sup>677</sup> H9. Changes are driven by recognition of a (collective action) problem in land governance. Data shows (long-term) problem(s) being politically recognized through crisis, statistics, technology, or patterns of land use; and starting a search for new institutional rules-in-use.

<sup>678</sup> H6. Change processes are led by a reform champion. Data underlines the central and indispensable importance of this leader throughout the institutionalization process.



external best practices (H7)<sup>679</sup>. These coalitions always included domestic veto-players, and depending on the time and context, liberal state-builders.

The main difference between Bosnia and Kosovo was that such coalitions were less broad in the Bosnian cases. A few actors, such as party leaders, appeared central in changing land use governance at canton and entity level. Such actors included the Bosniac President, Bakir Izetbegovic, but also Trnovo's mayor, Ibro Berilo, who had demonstrated he had the power to veto proposed changes in land use rules and asserted his authority over land alienation.

The evidence suggests these actors were valued as political facilitators by investors. Their support was regarded as essential to enable specific deals like Buroj Ozone in Trnovo, as they had the network and/or authority to adjust spatial plans and land use regulations to make such specific projects possible. The case studies from Sarajevo Canton thus suggest that the legacy of Bosnia's fractured formal system of land governance (created at Dayton) requires investors to rely on (party) political connections in order to be able to secure access to plots of land that fall under multiple authorities. Thus we can confirm H2<sup>680</sup> in the Bosnian cases.

The case study research from Bosnia also suggest that outsiders, or actors who can exert countervailing pressure, can influence change at certain times, yet the real power to lead coalitions and change land governance remains with a narrow set of governing elites throughout quadruple transition. The case study evidence from Sarajevo and Trnovo findings suggests that activists and opposition politicians who demand transparency on the procedure to change land use rules and the environmental impact of particular investments, are actively marginalised. Liberal state-builders like the OHR were influential at times (like in recognizing a moment of crisis) or even over the longer-term, by providing financial resources to institutionalize land governance reform. Yet this external influence lasted only as long as governing elites perceived the expected outcome as beneficial to them: i.e. that it created land rents that they could control, and limit access to. This appeared to be their

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<sup>679</sup> H7. Changes occur according to a plan of action. Data shows institutionalization occurs in accordance with this plan or best-practice.

<sup>680</sup> H2. Processes are led by a dominant coalition of governing elites. Data shows governing elites as central and indispensable throughout the institutionalization process.

logic for eventually supporting the institutionalization of the Bosnian land registration reform, and adapting it to fit their interests years after Ashdown had imposed it. That liberal state-builders did not hold great leverage over governing elites also showed in the Tmovo case: the World Bank could be snubbed when its project with the Federation to establish IBTV national park appeared to endanger the discretionary authority of local mayors to alienate local real estate. Indeed, actors like the OHR could possibly negotiate the fractured institutional authority in Bosnia and bring together decision-makers to drive certain land governance changes that would facilitate particular land investments. However, such roles seemed to be ultimately temporary and highly context-specific. Observed over the long-run, the OHR was only briefly relevant (see below). Powerful and well-connected Bosnian politicians like Izetbegovic appeared to replace any role he might have played in enabling specific investments. The support of governing elites and their networks thus appears to remain essential for institutionalizing any land governance reforms that they consider to be in line with their interests. In short, the Bosnian case studies suggest that changing land governance in Bosnia requires the involvement of governing elites, who intend these processes to leave them better positioned to the control and arbitrarily allocate land rents. Thus we can also confirm H3<sup>681</sup> in the Bosnian cases.

The cases from Kosovo reveal the emergence of broader reform coalitions. However, it took time and repeated failures for these to form. All the Kosovar cases suggest that from the outset of quadruple transition, there were few actors (among citizens, local authorities and the international community) who were willing to dedicate their limited resources to regulate rampant illegal construction and to update the legal framework for regulating land rights. Indeed, the case study findings show that prior to 2008, vested interests in piecemeal and arbitrary enforcement of land rights and land use rules prevailed. This kept unregulated land access as the status quo. Efforts to recover Kosovo's cadastre and to constrain illegal construction stalled, and no external agenda or EU conditionality seemed to make a difference. Strpce's municipal authority remained unable to enforce

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<sup>681</sup> H3. Changes are institutionalized incrementally to ensure these align with the dominant coalition's political and economic interests. Data shows governing elites constantly manipulating intermediate institutional outcomes.

land rights while Pristina and Belgrade continued to disagree who could authorize the privatization of Brezovica, a result of Kosovo's status and statehood being enduringly contested. Thus the land alienation rights of the ski resort, like Kosovo's cadastre, remained contested. As mediation by the UNSRSG failed to resolve the dispute, and time passed, the risks of illegal construction and physical deterioration of the ski resort increased.

However, after independence new Kosovar local and national level actors had been elected. They reflected on their communities' successive failures in dealing with unregulated land access, and how this barred land investment. They learnt that the solutions required putting (new) institutional rules into use through new forms of cooperation. Thus in Kosovo the 'boundary rules' had changed, meaning that it became easier to form coalitions that included (former) rivals. A prime example of this was how Strpce's mayor, who had long refused to cooperate with Pristina, was now not just included in the GoK's Inter-ministerial Steering Committee (ISC), but was given rights to veto any decision to alienate Brezovica. At the same Strpce's mayor accepted the GoK's line to deny Serbia's claim on formal authority to alienate the ski resort. Likewise, the GoK, led by the ousted mayor of Pristina, cooperated on legalization with his successor. Both apparently had an interest in this, despite their (live) political rivalry. After years of squatting, also Pristina's voters seemed to recognize that there was (economic) value in having a legally secure title and more institutionalized land use rules. The findings also demonstrated that these broad coalitions were able to institutionalize new rules by adapting them incrementally and because liberal state-builders provided technical and financial resources. Moreover, liberal state-builders seemed to help governing elites in drawing lessons from their earlier failures to resolve these problems, as notably USAID did after rampant encroachment. The changes in land registration were also characterized by incremental change and trial-and-error. Domestic actors worked closely together with donor projects over the long-term to reconstruct (notably with World Bank support) and return (notably with EU support) Kosovo's cadastre.

Thus like in Bosnia, coalitions for driving land governance reform were driven largely by economic concerns over enduring problems of unregulated land access, not some external solution

known from the outset. Unlike Bosnia, Kosovo's coalitions appeared to be broader, while their goals seemed more open-ended and ready to adapt and adopt new solutions in light of earlier failures to resolve those problems. Especially from 2008, Kosovo's reform coalitions seemed to be comparatively more inclusive and less fixated on micromanaging change in line with narrow interests compared to Bosnian governing elites. Again, the data suggests this was because of the context specific reason that in Kosovo, economic concerns caused by unregulated land access problems persisted and grew among governing elites. We can thus confirm H10<sup>682</sup> and H11<sup>683</sup> in the Kosovar cases.

By confirming these hypotheses, two further insights can be drawn with regard to the roles external actors can play in quadruple transition in Bosnia and Kosovo.

First, the cases dispute the idea of change occurring in land governance due to the emergence of reform champions or leaders with a clear and coherent plan that they then execute (H6<sup>684</sup>). Obvious 'leaders', like the EUSRs who were embedded and held multiple positions within the local institutional framework, intervened haphazardly in processes of change in land governance. The findings show that over the long-run, as such actors became less involved, their interventions were adjusted or reversed. This seemed to be because they had failed to account for the preferences of local actors, or because these actors learned to adapt to an evolving situation. This was apparent in the Bosnian land registration case, where the RS geodetic authority recentralized authority over land registration processes a decade after Ashdown had imposed the dual land registration system. It also seemed clear in the Brezovica case, where the ISC came to adjust the EU-funded "blueprint" solution for Brezovica, as local actors decided that it was insufficiently considerate of local needs and unattractive for prospective investors. This is not to say that external actors like the EUSR played no significant role. Yet the most effective liberal state-builders appeared to be those who were committed

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<sup>682</sup> H10. Change processes are led by a broad coalition of actors. Data reveals an evolving set of actors, including (potential) veto players, playing different "functional roles" in the adapting institutions.

<sup>683</sup> H11. Changes are institutionalized through adaptation and trial and error, possibly over a long period of time. Data shows new rules are incrementally adapted as actors search context-appropriate solutions.

<sup>684</sup> Change processes are led by a reform champion. Data underlines the central and indispensable importance of this leader throughout the institutionalization process.

to support local reform efforts over a long period of time and able to adapt their proposed solutions to the evolving political and socio-economic context and preferences of national and local leaders. This attitude to land governance change processes was perhaps best exemplified by the World Bank land registration projects (in both countries), as well as USAID's support for land use and land alienation reform in the Brezovica case.

Second, the relevance of externally derived solutions, such as best practices (e.g. Doing Business Rankings on property registration and construction permitting), conditionality, standards and reform agendas, seems limited in the observed cases. Liberal state-builders could help recognize a potential problem in land governance, as mentioned above, and occasionally, their solutions were integrated into domestic reform agendas (such as construction permitting reform in Bosnia after the 2014 protests). Moreover, the emergence of new external standards, like the *acquis* on INSPIRE that arose in 2007, did lead to opening budget lines so that local ministries could apply for funding (e.g. spatial planning digitalization for better regulating land use (IRUSP) in Kosovo). Still, the role of liberal state-builders seems mostly limited to funding and providing technical and intermediation support for local land governance reform efforts.

Finally, liberal state-builders are not the only external actors who may influence of change in land governance. In Bosnia foreign investors may finance rule changes if it positions them to benefit from privileged access to land rents, as Buroj Ozone's 'charity' in prematurely paying for the revision of spatial plans (even before a formal tender) suggests. In Kosovo, Serbia's role in contesting the authority of Kosovo's institutions to regulate land seemed to inadvertently drive change. By continuously rejecting its claims to sovereignty, and taking targeted actions like casting local attempts to alienate Brezovica as a potential land grab, Serbia seemed to motivate domestic and external actors in Kosovo to reduce doubt that they were enabling rent-seeking. In other words, Serbia's countervailing power might inadvertently push Kosovo's elites to adapt land governance toward a more open access order.<sup>685</sup>

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<sup>685</sup> The evidence indicates that EULEX could also play such a role, but only occasionally, given its limited mandate and resources.

By observing change over the long-run, we are thus given insight into which types or forms of external intervention in the processes of changing land governance matter: agenda-setting and short-term interventions are likely ineffective or even counterproductive. External actors that engage over the long-term, that are ready to adapt and/or play to the political-economic concerns and interests of local veto-players are more likely to shape situational rules.

The third and final sub-research question was: *what form of economic governance do outcomes of these processes (of change in land governance) consolidate?*

Based on the case studies, the emerging forms of economic governance in Bosnia and Kosovo appear different. The Bosnian land registration case study shows that, old, dysfunctional information rules like land records were being put back into use as governing elites eventually permitted land registration systems to be modernized. This theoretically opened possibilities for (foreign) investment that was free from politically interference. Indeed, a formal land market had emerged in Sarajevo. Yet this only ostensibly consolidated an Open Access Order. Governing elites were left with broad discretionary authority over land use and alienation authority, which only appeared to be magnified by the clarification of land records. Politicians with a history of supporting real estate development like Izetbegovic (across Sarajevo Canton) and Berilo (in Trnovo) could act as political facilitators for particular land deals, while ignoring encroachment, environmental and rent-seeking risks. In fact, their authority and informal links to other party-political power brokers appeared to make them especially well positioned to manipulate local land use rules for specific investors. Thus as harmonization and modernization of land registration systems continued, other reform efforts, which would infringe upon governing elites' abilities to make micro-adjustments in land use regulations, could be held off. By 2015 a handful of local NGOs and opposition politicians were positioned to exert countervailing pressure, and appeared to use their influence to demand more transparency, accountability and expediency in land use and alienation governance with some success. The inclusion of construction permitting reform in the Reform Agenda and local resistance to opaque

land use rule ‘corrections’ indicated that possibilities remained to move toward a more open access order. Still, little suggested that party leaders and entrepreneurial mayors would become less well placed to politically facilitate large land investments or to veto changes that would make access to land rents more impersonal and less susceptible to rent-seeking. Thus, overall in Bosnia land governance change appeared to contribute to consolidating a LAO (H4<sup>686</sup>).

By contrast, Kosovo appears to have been less able to consolidate a new form of economic governance (H12<sup>687</sup>). The findings from all the Kosovar cases suggest that this was because the problems of unregulated land access persisted to a significant extent. Despite improvements in land registration, uncertainties about the reliability of land records remained, in part because the procedure for clarifying land rights seemed unclear once the old cadastre returned from Serbia. Legalization had started in Pristina, yet whether it would ‘end’ illegal construction remained an open question to all the actors involved. Even with a deal signed for Brezovica, it remained unclear if the investment would arrive. By 2015, formal land markets thus remained tiny and fragile. Meanwhile the ability of national and local governments to provide, expand and reform access to land rents remained significantly dependent on donors, especially in land registration.

On the other hand, processes to transform land registration, use and alienation governance that intended to open access to land rents were in full swing. Governing elites continued to recognize that (foreign) land investment remained weak and problems of unregulated land access endured. Coalitions of politicians (from opposing parties), external actors and even the odd NGO appeared to be ready to cooperate to change this situation. Thus more inclusive reform coalitions had emerged, which continued to drive processes to more easily access land rents. In Pristina such processes even appeared to enhance transparency in land use governance, as new digital technology came available that allowed citizens to monitor changes in land use and spatial planning rules.

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<sup>686</sup> H4. Outcomes of change in land governance consolidate the LAO. Data suggests the rules are changed in a way that consolidates the ability of governing elites to grant access to land rents based on personal and political connections and to skew the economic level playing field.

<sup>687</sup> H12. The outcome of the process of change in land governance does not consolidate an access order. Data shows institutionalization amid a broader state of flux and a fragile form of economic governance that remains open to further change toward a LAO or OAO.

Kosovo's economic fragility, worsened by its multiple enduring predicaments in land governance arguably explains the difference with Bosnia. For this may explain why its cadastre agency pursued not one but two strategies to recover its land registration system; and why the largest land deal in Kosovo's post-war history depended on the deal being seen as transparent, inclusive and locally trusted enough, especially by Strpce' Serbs. It may also explain why it was possible that the governments of Pristina and Kosovo, controlled by rival parties, had cooperated, and successfully convinced tens-of-thousands to register their illegally constructed homes for legalization.

Where all these processes would lead remained highly uncertain. Indeed, by 2015, Kosovo's land governance could be seen to be back in a state of flux, just as in the beginning of quadruple transition. Yet, in view of the limited incentives for Bosnian governing elites to make access to land rents more impersonal, Kosovo's reformers could consider enduring fragility and uncertainty in land governance as a blessing in disguise.

### ***Final remarks***

The shortcomings of this research, particularly its scope and methodology, suggest venues for further research in changing land governance in quadruple transition.

To nuance the elite-and-economy-focussed, rational choice-based argument, more quantitative and ethnographic research would be welcome. This could help uncover some of the bottom-up pressures for change, such as changes in voter behaviour and social protests. Investigation into the legitimacy of the far-reaching involvement of external actors in changing land governance should not remain overlooked either. Finally, it would be a valuable to see what drives land governance change in comparable transition contexts. The IAD may also be usefully deployed to investigate changes in the governance of other natural resources in Bosnia and Kosovo. This may help expand knowledge of what drives institutional change in economic governance in quadruple transition generally.

Regardless, the thesis hopes to have demonstrated the value of using this rational choice institutionalist approach to examine processes of change in land governance after collectivism and



conflict; and, in doing so, to have added empirical input to debates between new institutionalists highlighting path dependent structures as inhibiting factors in liberalizing economic governance, and those stressing external incentives and agency.

## Appendix 1

**Table 1a: Cost of Doing Business Indicators for Land Registration, Use and Alienation Governance**

Source: <http://www.doingbusiness.org/Custom-Query> (last checked 13/06/2018)

	Bosnia			Kosovo		
	Cost enforcing contracts (% of claim)	Cost of registering real estate (% of value)	Cost to obtain a construction permit of (% of warehouse value)	Cost enforcing contracts (% of claim)	Cost of registering real estate (% of value)	Cost to obtain a construction permit of (% of warehouse value)
2004	34					
2005	34	6				
2006	34	5	22			
2007	34	5	20,1			
2008	34	5	16,8			
2009	34	5,2	24,6			
2010	34	5,2	20,5	33	0,6	69,1
2011	36	5,3	21	33	0,6	75,1
2013	36	5,3	20,1	33	0,6	59,7
2014	36	5,3	20	33	0,3	10,3
2015	36	5,2	19,7	33	0,3	6,7
2016	36	5,2	19,3	34,4	0,3	6,4

**Table 2a: Time needed to enforce a contract, register an estate or obtain a construction permit in Bosnia and Kosovo in days**

Source: <http://www.doingbusiness.org/Custom-Query> (last checked 13/06/2018)

	Bosnia			Kosovo		
	Enforce a contract	Register real estate	Obtain a construction permit	Enforce a contract	Register real estate	Obtain a construction permit
2004	895					
2005	595	331				
2006	595	331	478			
2007	595	331	463			
2008	595	331	463			
2009	595	128	294			
2010	595	83	253	420	32	301
2011	595	32	253	420	32	301
2013	595	24	179	420	32	156
2014	595	24	179	420	27	151
2015	595	24	179	330	27	152
2016	595	24	179	330	27	152

## Appendix 2: Interviewees

Named interviewees					
(NI.#)	Name	Position	Organization	Location	Date(s)
NI.1	Florina Jerliu	Florina Jerliu, Professor of Urbanism, urban development consultant to the ex-mayor of Pristina	University of Pristina	Pristina	17.05.2015; 08.09.2015
NI.2	Andrea Capussela	Former PAK Board Member / ICO Head of Economics Unit, 2008-2011	PAK / ICO	Brussels (skype)	26.01.2016
NI.3	Kjartan Bjornsson	Former head of Operations EUOK	DG Enlargement	Brussels	8.01.2016
NI.4	Tamara Travar	Deputy Project Coordinator, Real Estate Registration Project	Authority for geodetic and property affairs (RS)	Banja Luka	4.11.2015
NI.5	Belmir Agic	Formerly in charge of the Public Register	Brcko government	Sarajevo	10.19.2015.
NI.6	Tomislav Tomic	Expert Advisor for Cadastral Affairs,	FGU	Sarajevo	10.13.2015.
NI.7	Svetlana Cenic	Independent consultant		Sarajevo	3.11.2015
NI.8	Mirza Pozder	Professor at Faculty of Engineering	University of Sarajevo	Sarajevo	30.11.2015
NI.9	Leila Bicakcic	Director	Centre for Investigative Reporting	Sarajevo	12.11.2015.
NI.10	Anja Zimic	Project Director, CILAP	Lantmäteriet	Sarajevo	25.11.2015
NI.11	Dragan Jevtic	Assistant Minister for Urbanism, at Ministry of Physical Planning, Civil Engineering and Ecology	Government of the RS	Sarajevo	05.11.2015
NI.12	Nasiha Pozder	Municipal council member (NS) Novo Sarajevo / Faculty of Architecture	Novo Sarajevo	Sarajevo	19.10.2015, 18.05.2016
NI.13	Damir Kapidzic	Assistant Professor	Faculty of Political Science, University of Sarajevo	Sarajevo	13.11.215
NI.14	Anes Podić,	-	Udruženje Eko-akcija,	Sarajevo	23.10.2015
NI.15	Rijad Tikveša	-	Ekotim	Sarajevo	14.11.2015
NI.16	Borissa Dugandzic Zivanovic	-	Crvena	Sarajevo	17.11.2015
NI.17	Senka Eminagic	Local staff member	IFC	Sarajevo	12.11.2015
NI.18	Amel Lalacic		ZGP	Email	30.11.2015
NI.19	Mirsad Jasarspahic	President	Foreign Chamber of	Sarajevo	20.11.2015

			<b>Commerce of BiH</b>		
NI.20	Ibro Berilo	Mayor	Trnovo Municipality (FBIH)	Trnovo	26.11.2015
NI.21	Kristina Jozic	Spokesperson SIPA	SIPA	letter	28.12.2015
NI.22	Kenan Muftic	Director	Terra Dinarica	Sarajevo	16.10.2015
NI.24	Ferat Shala	Deputy Minister for Environment and Spatial Planning	MESP (GoK)	Pristina	22.06.2015
NI.25	Agron Beka	Project Coordinator	Social Housing Property Rights Kosovo	Pristina	16.06.2015
NI.26	Murat Meha	CEO	Kosovo Cadastre Agency	Pristina	25.05.2015
NI.27	Xhevdet Shala	Legal expert	Kosovo Cadastre Agency	Pristina	18.09.2015
NI.28	Afridite Selmani	Contract Manager	Kosovo Cadastre Agency	Pristina	25.05.2015
NI.29	Erdon Gjinoli	Director	Chamber of Notaries in Kosovo	Email	12.10.2015
NI.30	Nehat Ramadani,	Property rights expert	USAID	Pristina	21.09.2015
NI.31	Sphend Ahmeti	Mayor	Pristina municipality	Pristina	20.04.2015
NI.32	Elvida Pallaska	Urban planner (speaking on own behalf)	University of Pristina	Pristina	30.09.2015
NI.33	Liburn Aliu	Director of the Department of Urbanism and Urban Planning	Pristina municipality	Pristina	9.05.2015
NI.34	Petrit Balija	Executive Director	Kosovo Banking Association	Pristina	10.09.2015
NI.35	Ivica Tanjasijevic	Deputy mayor	Strpce municipality	Strpce	28.09.2015
NI.36	Predrag Grbic	Municipal assembly leader	Strpce municipality	Strpce	28.09.2015
NI.37	Lorik Fejzullahu	Head of PPP Department,	MINFIN, GoK	Pristina	03.06.2015
NI.38	Raif Bajrami,	Deputy Director Urbanism Department	Strpce municipality	Strpce	28.09.2015
NI.39	Bernard Nikaj	Ex-minister for Trade and Development	GoK	Pristina	29.05.2015

Anonymous Interviewees				
(AI #)	Position	Organization	Location	Date(s)
AI.1	Official	Trnovo municipality (FBIH)	Trnovo	26.11.2015
AI.2	Anonymous urban planner	-	-	30.09.2015
AI.3	Unidentified contributor	-	Pristina	10.06.2015
AI.4	Officer for EU Integration	MESP, GoK	Pristina	18.06.2015

AI.5	Officer for International Cooperation	MESP, GoK	Pristina	18.06.2015
AI.6	EU Official	EU	Pristina	21.05.2015
AI.7	EU Official	EU	Pristina	19.05.2015
AI.8	International expert	-	Pristina	04.06.2015
AI.9	EU Official	EU	Sarajevo	25.11.2015
AI.10	Geodetic Official	-	Sarajevo	14.10.2015, 1.12.2015,
AI.11	Independent urban planning and urbanism expert	-	Sarajevo	13.10.2015, 26.11.2015
AI.12	Independent Bosnian urbanism expert	-	Sarajevo	2.12.2015, 20.11.2015
AI.13	Bosnian Official responsible for European Integration	-	Sarajevo	2.12.2015
AI.14	Official responsible for land use regulation	Canton Sarajevo	Sarajevo	20.11.2015
AI.15	Banker 1	Sarajevo bank 1	Sarajevo	30.11.2015
AI.16	Banker 2	Sarajevo bank 2	Sarajevo	1.12.2015
AI.17	Banker 3	Sarajevo bank 3	Sarajevo	1.12.2015
AI.18	International official	-	Sarajevo	25.11.2015
AI.19	EU Official	EU	Sarajevo	13.10.2015.
AI.20	Bosnian Official with interest in economic reforms	-	Sarajevo	26.10.2015
AI.21	Local journalist	-	Sarajevo	05.11.2015
AI.22	KPA official 1	KPA	Pristina	25.05.2015
AI.23	KPA official 2	KPA	Pristina	2.06.2015
AI.24	International official	-	Pristina	4.06.2015
AI.25	Local property rights expert	-	Pristina	19.5.2015
AI.26	Anonymous source	-	Pristina	19.09.2015
AI.27	Pristina banker 1	-	Pristina	1.10.2015.
AI.28	Official	Central Bank of Kosovo	Pristina	25.09.2015
AI.29	Kosovar official 1	-	Pristina	23.06.2015
AI.30	Pristina banker 2	-	Pristina	23.09.2015
AI.31	Kosovar official 2	-	Pristina	25.09.2015
AI.32	Member	Association of Municipalities	Pristina	21.05.2015
AI.33	An involved international expert	-	Pristina	23.06.2015
AI.34	Executive construction company 1	-	Pristina	23.09.2015

AI. 35	Executive construction company 2	-	Pristina	23.09.2015
AI. 36	Executive construction company 3	-	Pristina	24.09.2015
AI. 37	Property tax reform experts	-	Pristina (skype)	23.09.2015
AI. 38	Restaurant owner	-	Strpce	28.09.2015
AI. 39	Kosovar official 3	-	Pristina	02.06.2016
AI. 40	Anonymous Strpce citizen	-	Strpce	28.09.2015
AI. 41	Expert involved in BRDP	-	Strpce	24.09.2015
AI. 42	EU expert	-	Sarajevo	13.10.2015
AI. 43	International expert	-	Skype	10.06.2015
AI. 44	Expert	GIZ	Pristina	29.05.2015
AI. 45	Anonymous source	-	Pristina	09.09.2015.
AI. 46	Anonymous person	-	Pristina	08.09.2015.

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